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TAYLOR

ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND
RELATED MATTERS.

X (cont'd)

Labaw

Re: In Scott

EAC

Hearing held
8th floor
180 Dundas Street West
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange

Commissioner

P.S.A. Lamak, Q.C.

Counsel

E.A. Cronk

Associate Counsel

Thomas Millar

Administrator

EAC

Transcript of evidence
for

CUT2 (cont'd)

October 4, 1983

In Ch. EAC

VOLUME 44

X Scott.

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ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN
AND RELATED MATTERS.

Hearing held on the 8th Floor,
180 Dundas Street West, Toronto,
Ontario, on Tuesday, the 4th day
of October, 1983.

THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner
THOMAS MILLAR - Administrator
MURRAY R. ELLIOT - Registrar

APPEARANCES:

P.S.A. LAMEK, Q.C.)	Commission Counsel
E. CRONK)	
T.C. MARSHALL, Q.C.)	Counsel for the Attorney-
D. HUNT)	General and Solicitor General
L. CECCHETTO)	of Ontario (Crown Attorneys
	and Coroner's Office)
I.G. SCOTT, Q.C.)	Counsel for The Hospital for
R. BATTY)	Sick Children
M. THOMSON)	
B. PERCIVAL, Q.C.)	Counsel for The Metropolitan
D. YOUNG	Toronto Police
K. CHOWN	Counsel for numerous Doctors
	at The Hospital for Sick
	Children
F. KITELY	Counsel for the Registered
	Nurses' Association of Ontario
	and 35 Registered Nurses at
	The Hospital for Sick Children

(Cont'd)



APPEARANCES: (Continued)

J. SOPINKA, Q.C.)	Counsel for Susan Nelles -
D. BROWN)	Nurse
G.R. STRATHY	Counsel for Phyllis Trayner -
	Nurse
J.A. OLAH	Counsel for Janet Brownless -
	R.N.A.
S. LABOW	Counsel for Mr. & Mrs. Gosselin,
	Mr. & Mrs. Gionas, Mr. & Mrs.
	Inwood, Mr. & Mrs. Turner, Mr.
	& Mrs. Lutes and Mr. & Mrs.
	Murphy (parents of deceased
	children)
F.J. SHANAHAN	Counsel for Mr. & Mrs. Dominic
	Lombardo (parents of deceased
	child Stephanie Lombardo); and
	Heather Dawson (mother of
	deceased child Amber Dawson)
B. JACKMAN	Counsel for Mrs. M. Christie -
	R.N.A.
W.W. TOBIAS	Counsel for Mr. & Mrs. Hines
	(parents of deceased child
	Jordan Hines)




E R R A T A

Monday, October 3, 1983 - Volume 43

Page 8836, line 13 - should read "which autolysis
occurs most quickly."

Page 8827 should be Page 8828

Page 8828 should be Page 8827



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INDEX OF WITNESSES

NAME

Page No.

TAYLOR, (Dr.) Glen Paul; Resumed

8842

Cross-Examination by Mr. Labow

8842

Re-Examination by Mr. Scott

8856

Re-Direct Examination by Ms. Cronk

8864

Further Re-Examination by Mr. Scott

8906

Further Re-Direct Examination by Ms. Cronk

8913

CUTZ, (Dr.) Ernest; Resumed

8919

Direct Examination by Ms. Cronk (Cont'd)

8919

Examination by Mr. Scott

9017



/DM/ak

1
2 ---Upon commencing at 10:25 a.m.

3 THE COMMISSIONER: Yes, Mr. Labow?

4 MR. LABOW: Thank you, Mr. Chairman.

5 DR. GLEN PAUL TAYLOR, Resumed

6 CROSS-EXAMINATION BY MR. LABOW:

7 Q. I would like to ask you one or
8 two questions arising out of Mr. Olah's examination
9 yesterday, the very end of that examination that is
10 found on page 8838. You pointed out that the tissue
11 that is removed from the body on autopsy is trimmed
12 and put on slides and put into formalin and then
paraffin.

13 A. The sequence isn't quite that,
14 but basically, yes.

15 Q. And you pointed out that that
16 stops the decomposition?

17 A. Yes.

18 Q. With some minor artefacts?

19 A. Yes.

20 Q. Can you tell me what kind of
21 artefacts?

22 A. The artefact that occurs
23 during the fixation with formalin which is the first
24 step and it is basically nothing that can be really
25 appreciated at the level of examination with a light



1
2 microscope, but it does cause some chemical changes.
3 The fixation process works by causing chemical
4 changes to fixed molecules to prevent them from
5 breaking down, but in that process the chemistry is
6 changed a bit.

7 Q. Now, if tissue was in that
8 state, would it remain as it was fixed at that time
9 a couple of days later, a day later, for an indefinite
10 period?

11 A. Formalin fixed tissue should
12 remain more or less the same for probably years.

13 Q. Thank you. Now you told us
14 previously that your understanding was that the
15 normal therapeutic range for digoxin was between
16 1.5 and 2.5?

17 A. Yes.

18 Q. Micrograms per litre?

19 A. Yes.

20 Q. Which is the same as nanograms
21 per millilitre?

22 A. Yes.

23 Q. And that you wouldn't worry
24 until you saw a digoxin level greater than 3.5?

25 A. Yes.

Q. Would you have any concerns



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with a level between 2.5 and 3.5?

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A. If I was practising clinical medicine and trying to monitor digoxin levels I would probably review the clinical situation and ask for a repeat level.

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Q. Well, if you were acting as a pathologist and you went through a chart, a hospital record and saw a level of 3, would that spark anything in your mind if the clinician had not made a note?

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A. I don't think so.

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Q. Now, we have been told that the clinical diagnoses that appear on the preliminary autopsy report, are those diagnosis taken right out of the hospital record, and/or the pathology resident's evaluation of what that record shows? Would you agree with that?

A. Not quite. There are two groups of diagnoses in the form that was used at the Hospital for Sick Children. The first group were the clinical diagnoses as prioritized by the pathology resident when he reviewed the chart. The second group are the gross autopsy findings, those are the findings that were made at the gross autopsy examination.

Q. Now, I am concerned right now



1
2 about the clinical diagnosis, as opposed to the
3 anatomical diagnosis.

4 A. Yes.

5 Q. As a pathology resident it is
6 my understanding it would be the resident who would
7 review the hospital record?

8 A. That is correct.

9 Q. And then in conjunction with
10 the staff pathologist formulate the clinical diagnosis.

11 A. In my experience usually the
12 staff pathologist wasn't involved in making that
13 list of clinical diagnoses. The list was used more
14 as a guide for the pathology resident to determine
15 what the problems were in the case.

16 Q. How would they guide you?

17 A. During the performance of the
18 autopsy the resident would use that list to try to
19 make correlations between the clinical problems and
20 what he saw at autopsy. So he would use that list
21 of clinical diagnoses to look for certain problems
22 or certain changes in the body that may account for
23 those clinical problems he has listed.

24 Q. And how would you formulate
25 that list?

A. On review of the chart, just



1
2 jot down the diagnostic impressions of the attending
3 clinicians, and any other clinical problems that
4 may or may not have been noted in a formal sense.

5 Q. What sort of things would you
6 refer to in a hospital record to come up with the
7 clinical diagnosis appearing on an autopsy report?

8 A. Just to construct that list,
9 I would be interested in reviewing the consultant's
10 reports; frequently the clinicians would use a
11 problem oriented report format and would list the
12 problems, or I would make note which problems they
13 had listed. Occasionally if something had not been
14 listed either in the consultant report or in a
15 review of the case by a senior staff clinician, or
16 in a problem oriented approach I might find something
17 in an x-ray report or a lab report of some sort.
18 Basically ---

19 Q. I am sorry?

20 A. Basically I rely mainly on
21 what the clinicians have listed as the main problems
22 in one format or another.

23 Q. Would you go through the
24 progress notes carefully, for example?

25 A. The medical progress notes,
yes. I usually didn't read extensively the nurses'
notes.



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Q. Now I would like to turn to Exhibit 113 and it is right beside you, Mr. Commissioner, and that is the Inwood chart. Would you speak up a little bit, Doctor, some counsel are having difficulty hearing you.

A. I have it here. Yes.

Q. It is my understanding that you were the pathology resident who actually performed this autopsy?

A. Yes.

Q. And you were supervised by whom?

A. Dr. Phillips was the supervising pathologist at the time I performed the gross autopsy.

Q. Can you tell me what kind of supervision you received from Dr. Phillips prior to actually going ahead with the gross autopsy?

A. I consulted with - I'm sorry I can't remember if it was Dr. Phillips or Dr. Gillan who I know was also on this chart. Dr. Gillan frequently took over the supervising role for Dr. Phillips in Dr. Phillips' case. I spoke to either Dr. Phillips or Dr. Gillan, recounted what I thought the main problems were in the case and I



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then commenced to do the autopsy.

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Q. In this case the progress notes are quite short, they are found at page 61 of the chart, beginning at page 61.

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6

A. Yes.

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8

Q. What were you looking for based upon your review of the Hospital records in this case?

9

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A. Well, I can't remember specifically for this case, you will have to give me time to read the notes. As I said, what I would look for would be a feeling for what the clinicians thought the diagnoses were in this case, and for a feel of the clinical course and problems that the child had while in Hospital.

16

17

Q. Dr. Fowler's consultation can be found at page 64, it is a short consultation note; and at page 65 there is an x-ray examination.

18

19

20

A. Yes.

21

22

23

Q. And other than that we only have three pages of progress notes.

24

25

A. Yes.

Q. Would you mind reviewing those quickly.

THE COMMISSIONER: With what in mind?



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MR. LABOW: I just wanted to know what he was looking for in this chart, it is very short.

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THE COMMISSIONER: What he found rather than what he was looking for.

7

MR. LABOW: What he found, yes.

8

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THE WITNESS: Well, I listed what I found on the autopsy report under the clinical diagnosis.

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MR. LABOW: Q. The preliminary report is at page 36.

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A. According to the chart I listed under "Clinical Diagnoses" congenital heart disease with aortic stenosis and possible aortic septal defect. I notice that Dr. Fowler's consultation notes says "possible AS" which I interpreted to mean aortic stenosis. The child had congestive heart failure and was treated with digitalis and diuretics. There is a possibility that there was a rubella infection during the pregnancy of the mother, and that is on page 62. Is there anything else you would like?

22

23

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Q. At page 66 of the Statement of Facts, that is an exhibit at this Commission, there is a statement that the EKG showed signs of



1
2 digoxin toxicity on admission so digoxin was held in
3 this case. Did you know that?

4 A. I did not know that.

5 Q. Did you know that at 5:30 in
6 the morning on the 12th of March that this child
7 received a large dose of digoxin not meant for it
8 but meant for another child?

9 A. I did not know that.

10 Q. At the back of the record,
11 the Registrar informs me there is Exhibit 113A, that
12 is a patient incident report dealing with this
13 medication error. Did you ever see that report
14 prior to undertaking this autopsy?

15 A. I can't recall seeing this
16 report.

17 Q. So you didn't know before
18 undertaking this autopsy that this child had received
19 some digoxin not meant for it, and died about 24
20 hours later?

21 A. On my review of the chart I
22 did not know that.

23 Q. Now, Doctor, the reading, the
24 level taken at 9 o'clock on the 12th of March was
25 2.6 nanograms per millilitre, according to the
chemistry report, which apparently was not available



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until after this child had died. Would the fact that
this child had mistakenly received a dose of digoxin,
and the fact that digoxin had been held on admission
because the EKG showed signs of digoxin toxicity,
would that have made any difference in your report?

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A. I am sorry, you will have to
repeat that.

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Q. If you had known that digoxin
had been held because there were EKG signs that
showed possible digoxin toxicity?

11

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A. Yes.

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Q. And if you had known that this
child had then received a dose of digoxin not meant
for it.

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A. Yes.

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Q. Would that have made a
difference in your preliminary report?

A. I probably would have included
that as one of the clinical diagnoses, yes.

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A. Yes.

Q. Now my understanding is that



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after the gross autopsy, prior to the preliminary report being made, some kind of main disease would be put into that spot. Could you tell me why it wasn't in this case?

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A. I don't think I usually put a main disease on a preliminary report. This is just a preliminary report subject to many changes depending upon the other laboratory tests and examinations that are done prior to completion of the final report.

11

12

Q. So it was your practice not to put anything in that spot?

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A. No. The use of that main title is to try to sum up the final diagnosis, and I generally did not apply the main title to the preliminary report.

17

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Q. I would like to turn to the final autopsy report, page 2, that is found at page 21.

20

21

THE COMMISSIONER: Is that 21, it is also 113B.

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MR. LABOW: It is also 113B, Mr. Commissioner, that page 2 doesn't change.

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THE COMMISSIONER: Is there some



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reason for that?

MR. LABOW: 113B was just given to us recently, Mr. Commissioner, because page 11 - dealing with the central nervous system report.

THE COMMISSIONER: Oh, I see. Yes, thank you.

MR. LABOW: And is now included.

THE COMMISSIONER: Oh, yes.

MR. LABOW: Q. Doctor, are you the doctor who wrote page 2 of that?

A. This report was written in consultation with Dr. Cutz and this was one of the cases that we were asked to complete in a hurry to aid the police in their investigation following the events of the 21st of March.

Q. Doctor, you were asked to complete the final autopsy report in a hurry but not the preliminary report?

A. The preliminary report at that time was "routine autopsy" and was handled in the usual way which was to be issued within 24-48 hours after completing the gross autopsy.

Q. Prior to completing the final report had you been informed about the patient incident report?



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A. I am sorry, this is the first
time I am aware of that patient incident report.

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Q. Page 2 of that report, in the
second to last paragraph points out that there were
several factors may have contributed to the death of
this infant, however, no clear cause is defined.

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A. Yes.

Q. That was your conclusion in
consultation with Dr. Cutz?

A. Yes.



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Q. At Volume 42 when Dr. Cutz was here, briefly at page 8589 to 8590 Dr. Cutz indicated that his only association with this report was that he discussed it with you briefly and he signed it in Dr. Phillips' absence. My understanding of his evidence, and I must tell you I haven't had a chance to examine him on this point, is that page 2 had probably not been prepared when it was given to him to sign.

A. Yes.

Q. Do you agree with that?

A. I would disagree that the final report was not completed when he signed it. I can't see why he would sign an uncompleted report. Now, as far as who composed with me those conclusions I honestly can't recall if it was Dr. Cutz, Dr. Gillan or Dr. Phillips at that time. I remember that this was one of several autopsies I was asked to complete in a hurry to aid the police in their investigation.

Dr. Phillips was responsible for some and was not available for some of the time. I can't recall exactly who helped me write those conclusions.

Q. Now, is that an accurate representation of what your conclusion was?



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A. Yes.

3

MR. LABOW: I have no further

4

questions.

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THE COMMISSIONER: Okay, thank you,

6

Mr. Labow. Mr. Scott?

7

MR. SCOTT: Am I next?

8

THE COMMISSIONER: I'm afraid so.

9

MR. SCOTT: If I can just have one

10

second, Mr. Commissioner.

11

THE COMMISSIONER: Well, Miss Chown,

12

do you want to go next?

13

MS. CHOWN: I have no questions at

14

this point, Mr. Commissioner.

15

THE COMMISSIONER: Oh, all right.

16

RE-EXAMINATION BY MR. SCOTT:

17

Q. Dr. Taylor, you were read

18

yesterday by Mr. Marshall the evidence that you
gave at the preliminary inquiry in which you were
asked at page 114 about the contaminated blood and
you were asked if that meant diluted or what and
your answer was:

20

"The blood would be diluted by these
fluids, yes.

22

Q. Diluted by the fluids?

23

A. Yes."

24

25



1
2 Do you remember that exchange with
3 Mr. Marshall?

4 A. Yes.

5 Q. Yes.

6 MR. MARSHALL: I should really point
7 this out. Nobody else remembers that exchange. It
8 was not myself that put that series of questions to
9 this witness.

10 THE COMMISSIONER: Oh. Well, you
11 certainly did go to the preliminary inquiry.

12 MR. MARSHALL: Oh, I asked about that
13 but I made no reference to ---

14 MR. SCOTT: Well, I suppose it is
15 the ultimate failure that even Mr. Marshall doesn't
16 remember it but the transcript will reveal that he
17 asked it. But he is getting rather long in the tooth
18 and I think we can forgive him for overlooking some-
19 thing that happened as recently as yesterday.

20 MR. MARSHALL: I would point out
21 that Mr. Scott wasn't here, so, he can be forgiven
22 for his error.

23 MR. SCOTT: Therefore I have read the
24 transcript.

25 Q. However, Dr. Taylor, back to
you now, we must get on with this. I suggest to you



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that the contamination that you have described is,
upon reflection, capable of either increasing the
digoxin reading beyond its real level or decreasing
it. Would that be fair?

A. Yes, I stated that yesterday.

Q. Yes. And therefore when you
used the word "dilute" at the preliminary inquiry,
you were either not thinking of that possibility or
were not drawing attention to it?

A. The word "dilute" I think
was used to indicate that was not pure blood that I
obtained, that there were other factors in that
blood.

Q. Yes.

A. And the question was put to
me, would that mean that the digoxin level could have
been even higher and that was the first time I
actually thought of that and I said yes it could.

Q. Yes. And just to be sure
that I understand.

THE COMMISSIONER: To fill in the
pieces, it was Mr. Strathy.

MR. SCOTT: Oh, yes, I confuse them
all the time, it is the similarity of their interest.

Q. Well, just so I understand,



Taylor, re.ex.
(Scott)

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Dr. Taylor, because that is one of your functions to make sure we all understand. If the contamination occurred by edema fluid, ascites fluid, urine or bowel fluid, I take it the question of whether the digoxin reading had been artificially increased or decreased would depend very largely on the digoxin level of those fluids that effected the contamination?

A. Yes.

Q. Well now, I think you told somebody yesterday, we'll leave it at that, that there would be between one and two ounces of fluid in the gutter of this child Estrella?

A. Yes.

Q. Yes. I think you also said that of this half or slightly more than half that there would be one and a half ounces of ascitic fluid?

A. No, I'm sorry, the ascitic fluid was drained to a substantial degree during the performance of the autopsy.

Q. Yes.

A. So, there wouldn't be the full amount of ascites present in that fluid.

Q. So, I take it from that that you are not able to give any assessment as to what proportion of the gutter fluids would be ascitic?



1
2 A. The specimen that I sampled
3 from the pelvis looked grossly like blood, it did not look
4 like diluted, visibly diluted material. But I
5 couldn't say how much contaminating fluids, from
6 what sources would be in that.

7 Q. But I take it if there was
8 ascitic fluid that formed the contamination, is it
9 not likely that that fluid would reveal, that the
10 ascitic fluid would have a higher digoxin reading
11 by itself?

12 A. I don't know if it would be
13 higher or lower. I would suspect that there would
14 be digoxin in the ascitic fluid, but I don't know
15 which way it would go.

16 Q. All right. Now, just one
17 other question which you may be able to help us with.
18 What is the therapeutic reading for potassium?

19 A. You mean the normal level?

20 Q. Yes.

21 A. Three and a half to five and
22 a half.

23 Q. Yes.

24 A. A milli equivalence per litre.

25 Q. Yes. Now, I take it, was this
the baby that post mortem had a potassium reading of



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10 or 11?

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A. I would have to review that,

4

I can't recall.

5

Q. All right. Well, don't trouble

6

to review it now, let me just ask you a theoretical

7

question. If you found in an autopsy performed let

8

us say within 24 hours of death a potassium level of

9

10 or 11, would you regard that as a toxic reading

10

A. For potassium I would regard

11

that as having no significance.

12

Q. Why having no significance?

13

A. Because potassium normally

14

increases in fluids and blood after death.

15

Q. Yes, Dr. Cutz has told us

16

about that. Let me just ask you this. I take it

17

that if you believed that the potassium level of 10

18

or 11 was the reading that you would have obtained at

19

the moment of death, you would regard that potassium

20

A. Yes.

21

Q. All right. And what you know

22

from your scientific studies and the

23

scientific studies of others is that an elevated

24

potassium level which would be toxic at the moment of

25

8 2 death of 10 is explained by post mortem changes in
3 the body?

4- Yes.

6 Q. Yes. So, your scientific
reading and the background of other pathologists
in + - - - - - you to discount a potassium
reading obtained post mortem within 24 hours because
of your actual knowledge of changes that occurred to
give that false reading?

10 A. Yes.

11 Q. Yes.

13 THE COMMISSIONER: It may not matter
14 11. Is this instantaneous on death, this
change?

15 THE WITNESS: No, it occurs over a
time.

16 THE COMMISSIONER: What sort of time.
17 I mean, if by any chance you were to take the
18 autopsy within two hours, would it be different than
19 if you had to wait 24 hours?

20 THE WITNESS: Yes.

21 THE COMMISSIONER: Considerably
different?

22 THE WITNESS: I don't know the exact
23 time course. The changes begin immediately with the
24
25



Taylor, re.ex.
(Scott)

1
2 death of a cell. I don't know the exact time course.

3 MR. SCOTT: Q. But because of what
4 we - I say we, that's absurd - because of what
5 pathologists know, you can discount that reading as
6 having anything to do with death?

7 A. Yes.

8 Q. All right. Now, when was it
9 that you learned that, that pathologists learned
10 enough about body changes and potassium changes to
11 make that discount that allowed you to exclude it?

12 A. Very early on in my training.

13 Q. Well, that's when you learned
14 it, but I take it may have been that 25 years ago,
15 or 50 years ago, I don't know if you got a postmortem
16 serum level of potassium 10 or 11 someone would say
17 potassium caused the death of this child?

18 A. The post mortem changes in
19 potassium have been known for a long time.

20 Q. How long?

21 A. I can't say. As long as
22 electrolytes have been measured I suppose.

23 Q. All right. And I take it we
24 are now at a stage in pathology when we are learning
25 that we know nothing or little about post mortem
changes that affect digoxin readings?



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A. I would agree with that.

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Q. Yes. So that it may be in

4

20 years we will be able to say, if studies are done, that elevated levels post mortem of digoxin are very meaningful or meaningless?

5

6

A. Yes.

7

Q. Yes. And therefore in that

8

period of time when the work has been done we may

9

be able to say that a digoxin reading of 72 post

10

mortem has nothing to do with death?

11

A. Perhaps, yes.

12

Q. On the other hand, when we

13

learn more we may say that it has something to do with death?

14

A. Yes.

15

Q. But at the moment we haven't

16

a clue.

17

A. I agree with that.

18

MR. SCOTT: Those are all the questions, thank you, Doctor.

19

THE COMMISSIONER: Yes, thank you.

20

Miss Cronk?

21

MS. CRONK: Thank you.

22

RE-DIRECT EXAMINATION BY MS. CRONK:

23

Q. Dr. Taylor, you are almost on

24

25



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2

that plane back to Vancouver. I will try not to
delay you longer than necessary.

4

A. Thank you.

5

Q. Do you recall yesterday, Dr.

6

Taylor, during a course of your discussion with Mr.

7

Roland telling us that Dr. Freedom was supposed to

8

be called by the involved pathologists in every case

9

of an autopsy which involved a child with a cardiac
problem?

10

A. Yes.

11

Q. Do you recall that. Do you

12

recall as well saying that that was supposed to be

13

a matter of routine as you understood it?

14

A. Yes.

15

Q. Did you know, Doctor, prior

16

to January 11, 1981 when you conducted the autopsy

17

on Janice Estrella that Dr. Freedom was to be

18

notified in cases where the patient on whom the

19

autopsy was to be performed had congenital heart
disease?

20

A. I believe that I did know that.

21

Q. You knew that before the 11th?

22

A. Yes.

23

Q. All right. Doctor, leaving

24

aside the case of Janice Estrella, did you ever see

25

11



1
2 at the Hospital for Sick Children a note attached to
3 the medical record of other cardiac patients
4 instructing the involved pathologists to call Dr.
5 Freedom before conducting the gross autopsy?

6 A. I can't recall seeing such a
7 note directed to myself. Occasionally notes, such
8 notes will appear on charts asking that a certain
9 clinician be contacted or basically to ask that a
10 certain clinician be contacted but I can't recall
11 any more notes directing me to contact Dr. Freedom.

12 Q. Dr. Freedom specifically?

13 A. Yes.

14 Q. Well, for example, we know
15 from your evidence yesterday that you performed
16 the autopsy on Allana Miller. Was there a note
17 attached to Allana Miller's medical record asking
18 you to call Dr. Freedom before you started that
19 autopsy?

20 A. I don't believe so.

21 Q. Did you call Dr. Freedom
22 before conducting that autopsy?

23 A. I can't recall if Dr. Freedom
24 was called by me or by Dr. Cutz but I believe that
25 Dr. Freedom was present or aware of that autopsy,
yes.



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Q. Do you remember yourself calling him?

A. I did not call him myself as far as I remember.

Q. Thank you, Doctor. We know as well that you conducted the autopsy on Justin Cook and you spoke briefly about that yesterday. Do you recall a note being attached to the medical record of that child instructing you to call Dr. Freedom?

A. No.

Q. Did you call him for any other reason before conducting that autopsy?

A. I didn't call Dr. Freedom myself, Dr. Costigan I believe was involved, he was from the Cardiology Ward. Dr. Freedom knew of the, I believe he knew of the case. Dr. Cutz was present. Dr. Cutz was supervising quite strictly the autopsy.

Q. To your knowledge, did Dr. Cutz call Dr. Freedom about that autopsy?

A. To my knowledge I can't say.

Q. But you yourself didn't?

A. I did not.

Q. And then again we have heard this morning that you conducted the autopsy on Kristin Inwood?



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A. Yes.

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Q. Was there a note attached to the medical record of Kristin Inwood instructing you to call Dr. Freedom?

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A. I don't believe so, I can't recall for sure.

7

8

Q. Did you call Dr. Freedom before you conducted that autopsy?

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A. If you would just let me look at the chart for one minute I think I may be able to tell you.

12

Q. Fine, Doctor.

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A. I can't recall specifically if Dr. Freedom attended this autopsy. I believe it was some time later when he approached me about the findings in this case. I think I did call him and he couldn't make it to the autopsy that day, if I remember correctly the circumstances of this case, but that was some time ago.

19

20

Q. All right. But you think you called him to let him know that the autopsy was to take place?

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A. Yes, because I remember discussing the - I think I remember discussing the coarctation of the aorta that was present in this case.



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Q. Doctor, let us talk, if we can, about the note that was on the Estrella chart.

Can you tell me, first, who signed the note?

A. I did not make note of any name. I do not think there was a name.

Q. Did you have any understanding as to who left that note for you on the medical record?

A. I did not believe it was Dr. Freedom. I assumed it was one of his residents or a nurse from the ward. Dr. Freedom asked to "make sure that Dr. Taylor contacts me", so the note was put on the chart. That is how I assume that note arrived. There was not a name, as far as I remember, attached to it, other than to "Call Dr. Freedom".

Q. Did the note indicate or suggest, doctor, that Dr. Freedom had any particular reason for wanting to speak to you?

A. No, it did not. What I remember of the note, it was "Please call Dr. Freedom, such and such number." I cannot remember the number, whether it was a telephone number or hospital paging number.



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Q. I take it, doctor, that inasmuch as you had started your rotation in the Pathology Department at the beginning of January and this autopsy was conducted on the 11th, that, at that stage of events, you would not know whether or not it was usual or unusual for notes to be attached to medical records in that fashion, at that stage?

A. Yes, I agree with that statement.

Q. Doctor, you have told us that, even having regard now to the discussion that you did have with Dr. Freedom, you told us that you asked him why he wanted the post mortem samples to be taken for digoxin and that he gave you an explanation and you told us yesterday that, even with the explanation given to you by Dr. Freedom, you were, I believe you said, surprised at the request for a digoxin level.

Do I have that correctly?

A. Yes.

Q. You also said, I believe yesterday in your evidence, there was no sense of urgency in your mind applied to the request and it was of dubious concern to you. Do I have that



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correctly?

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A. That is correct.

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Q. As I understood your

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evidence - and I want to be clear about this,

6

doctor - you told Mr. Marshall yesterday that the

7

potential involvement of digoxin toxicity in the

8

death of Janice Estrella was never mentioned to

9

you. Do I have that correctly?

10

A. Yes.

11

Q. In the course of your

12

discussion with Dr. Freedom, did he not say to you

13

that he was concerned about the possibility --

14

MR. SCOTT: I am not sure that I

15

understood Miss Cronk's last question, but if it is

16

designed to qualify Dr. Taylor's other evidence,

17

perhaps his other evidence should be put to him

18

more directly, because I read him to say that Dr.

19

Freedom suggested to him that the post mortem test

20

should be done because there had been some manage-

21

ment difficulties with digoxin when the Estrella

22

baby was alive.

23

THE COMMISSIONER: What he is

24

doing now is confirming that Dr. Freedom never

25

mentioned that digoxin toxicity was a concern in the

cause of death.



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MR. SCOTT: After death?

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THE COMMISSIONER: No, was a
concern in the cause of death.

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MR. SCOTT: As long as that is
clear.

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THE COMMISSIONER: I think he is
merely saying the same thing that he said yesterday,
and I do not think you can have any complaint.

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MS. CRONK: I would like to be
abundantly fair about this, Mr. Commissioner --

10

11

MR. SCOTT: Just your normal
level, Miss Cronk. I don't think you need to be
"abundant" about it.

12

13

MS. CRONK: Thank you, Mr. Scott.

14

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Q. I would like to read you
the question and answer, Dr. Taylor --

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17

THE COMMISSIONER: Well, I do not
think -- if you want to follow it up.

18

MS. CRONK: May I, sir?

19

20

Q. Mr. Marshall put this
question to you, Dr. Taylor. He was talking about the
request for sample to be taken for a post mortem
digoxin level when he said:

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"Q. Would it explain that
concern if digoxin toxicity, as

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having potential involvement in
the death, that was what was in
mind?"

"A. If that was what was in
mind, yes, but that was never
mentioned to me."

Doctor, I would ask you this
morning, during the course of your discussion with
Dr. Freedom, did he not say to you that he was
concerned about the possibility of digoxin toxicity
contributing to this child's death?

A. I did not interpret that
conversation that way. I interpreted it to mean
that there was some problem in retaining a good
therapeutic level in Janice Estrella during life.
I did not interpret it to mean that digoxin was a
causative agent in the death of the child.

Q. Doctor, do you recall,
sometime after the arrest of Susan Nelles in respect
of four deaths at the Hospital, making notes and having
those notes typed up concerning your involvement
in autopsies which you had performed at the Hospital?

A. Yes.

Q. Do you recall making
notes of that kind with respect to the autopsy



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of Janice Estrella?

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A. Yes.

4

Q. Do you recall, in those

5

notes, with respect to your involvement with Janice

6

Estrella's autopsy, indicating that you had spoken

7

to Dr. Freedom and then indicating further:

8

"He stated there had been some

9

problem in therapy related to

10

digoxin and he was concerned about

11

the possibility of therapeutic

12

toxicity contributing to this

13

infant's death."

14

Do you remember making that note,

doctor?

15

A. Yes.

16

THE COMMISSIONER: Therapeutic

17

toxicity or digoxin toxicity - is there such a

thing is therapeutic toxicity?

18

THE WITNESS: What I meant was

19

that -- I basically meant what I stated this

20

morning; that my interpretation was that there was

21

a problem in maintaining good levels in Janice

22

Estrella during life and there was some concern

that they may have overshoot, to a degree.

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I do not think it was stated

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bluntly that digoxin may be a factor in the death
of Janice Estrella.

THE COMMISSIONER: Could I have
that question again, what the note said, please.

MS. CRONK: Yes.

Q. As I understand it,
doctor - and I am reading from the language of the
note - you indicated that you spoke to Dr. Freedom
and you then said and recorded:

"He stated there had been some
problem in therapy related to
digoxin and he was concerned about
the possibility of therapeutic
toxicity contributing to this
infant's death."

A. Yes.

Q. That is the note you made
sometime after the arrest of Susan Nelles with
respect to the discussion you had had with Dr.
Freedom?

A. Yes.

Q. Do you recall when you
made these notes, doctor?

A. I believe it was --

THE COMMISSIONER: Therapeutic



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2 toxicity causing, or contributing to the death?

3 MS. CRONK: "Contributing to
4 this infant's death".

5 THE WITNESS: I'm sorry, these
6 notes were written, I think, in early April. I am
7 not exactly sure; they are not dated. I was asked
8 by Dr. Mancer to jot down my recollection of events,
9 and I would not put too much stress on that. I think,
10 at the time, there was the pressure of the other
11 cases and I think I may have, unfortunately, wrote
12 that down.

13 My recollection is that there was
14 no specific mention that digoxin was involved in
15 the death of this child. It was an off-the-cuff
16 remark.

17 Q. Doctor, when you said
18 that these notes were made in April, I take it you
19 are referring to April of 1981?

20 A. Yes.

21 Q. That would have been a
22 month plus from the time that the events crystalized
23 in the Hospital and the charges were laid against
24 Susan Nelles?

25 A. Yes.

Q. It would have been, as



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well, within a month to a month and-a-half of the
date of your actually signing the final autopsy
report on Janice Estrella?

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A. Yes.

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Q. Doctor, would you agree
with me that your recollection of the matters that
you discussed with Dr. Freedom would have been
clearer then than it is today, some two years
later?

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11

12

13

A. Recognizing that there
was a very tense atmosphere at The Hospital for
Sick Children, they may have been, yes, but
recognizing that there was a tense atmosphere there.

14

Q. I recognize that, doctor.
Thank you.

15

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THE COMMISSIONER: Before you go
on, maybe I missed something, but is therapeutic
toxicity, is that a slip of the pen? What on earth
is --

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THE WITNESS: I'm sorry, sir.
These were dictated notes and I did not really proof
them. It is not very good English.

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THE COMMISSIONER: Even conceding
that you never meant to say it at all, what, if you
had meant to say it, would you have said? Digoxin



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toxicity, I take it?

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THE WITNESS: Yes.

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THE COMMISSIONER: How did the
"therapeutic" come into it?

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THE WITNESS: Toxic levels arising
out of the ordinary course of therapeutic manage-
ment of digoxin.

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THE COMMISSIONER: Is there a
possibility that what you were saying in the notes -
and I realize you are now saying that the notes
do not properly represent what your thoughts were
at the time - it was concern with the possibility
of a therapeutic dosage of digoxin somehow producing
a toxic state and causing death? I know that is
not what you are saying now but that is what you
were supposedly writing?

16

THE WITNESS: Yes.

17

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THE COMMISSIONER: And that,
sometimes in doctor's shorthand, comes out as
therapeutic toxicity because, for those of us who
are not medically minded, it is a contradiction in
terms.

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THE WITNESS: I agree, sir.

22

THE COMMISSIONER: Yes. All right.

23

MR. STRATHY: Mr. Commissioner, I

24

25



1
C11 2 recall that there has been evidence where the
3 term "therapeutic toxicity" has been used specifi-
4 cally by some of the physicians.

5 THE COMMISSIONER: Maybe I should
6 dedicate my life to the cleaning up of doctors'
7 language, because it can't be right.

8 MR. STRATHY: I think, in fact,
9 it is a fairly precise term.

10 THE COMMISSIONER: It is too
11 precise; that is the problem. It has left out
12 about five words.

13 MR. STRATHY: It refers to toxicity
14 arising out of a therapeutic setting.

15 THE COMMISSIONER: If they had
16 said that, I might understand it.

17 MR. STRATHY: It is a sort of
18 short form they use.

19 MS. CRONK: Mr. Commissioner, may
20 I ask the witness a question?

21 THE COMMISSIONER: Yes.

22 MS. CRONK: Q. Dr. Taylor, it
23 may be apparent from your discussion with the
24 Commissioner but, having regard to a situation where
25 digoxin is administered during life to a patient
in a therapeutic sense, it is possible, I take it,



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that, in those circumstances, toxic effects may result from the therapeutic administration of digoxin?

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A. Yes.

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Q. In that context, perhaps one could describe that as therapeutic toxicity?

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A. That is what I mean, yes.

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Q. And, doctor, with that in mind - and I recognize what you have said about your recollection now and your recollection at the time you prepared these notes, With that in mind, do you recall specifically, in your discussion with Dr. Freedom, as you sit here today, any discussion about the possible involvement or contribution of digoxin toxicity to this child's death?

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A. I would have to rely in part on these notes but my recollection now is that there was no specific mention that digoxin caused death. The mention that I recall about digoxin was the fact that there was a problem in maintaining good therapeutic levels of digoxin in this child; "Would you check the digoxin level". That is the gist of what I recall now. I cannot remember that Dr. Freedom said specifically that digoxin may be a factor in the death of this child.



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Q. Doctor, you told us

yesterday as well, and I believe it was to Mr.
Roland, that your meeting with Dr. Freedom in the
cafeteria when you did discuss with him the level
of 72 nanograms was just a chance conversation.

Do I have that correctly?

A. Yes. I just saw him to
speak to him.

Q. Indeed, I think you
suggested later that it was almost by accident that
that discussion had taken place and that you had
run into Dr. Freedom?

A. At that particular time.

Q. You told us as well, as I
understand it, that you had no intention personally
of seeking Dr. Freedom out to tell him of the level.

Do you recall that?

A. Yes.

Q. Dr. Freedom, as I under-
stand it, had made this request directly on you and
you spoke to him and you felt that request to be
surprising under the circumstances?

A. Yes.

Q. You were aware at the time,
I take it, that he was the senior staff cardiologist



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C14 2 in the Hospital?

3 A. Yes.

4 Q. And you were aware at
5 the time that the level of 72 was one with which
6 you had had no prior experience? It was the
7 highest number you had ever seen?

8 Do I have that correctly?

9 A. Yes.

10 Q. In all of those circum-
11 tances, Dr. Taylor, were you not personally concerned
12 to report to Dr. Freedom what the result of that
13 assay had been?

14 A. I was not concerned
15 enough to deliberately go to his office or call him,
16 yes, but I did tell him.

17 Q. Were you concerned enough
18 to intend to see him and report the level to him?

19 A. I cannot say what I
20 would have done if I had not met him a day or two
21 or three later.

22 Q. We know, doctor, that,
23 at that stage, as I understand your evidence, you
24 had not had any discussion with Dr. Mancer with
25 respect to that level?

A. That is right.



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Q. You had not had any

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discussions with any senior staff pathologist in the
Pathology Department?

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A. That is correct.

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Q. You had, however, dis-
cussed the matter with your peers, your fellow
residents, in the Pathology Department?

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A. Yes.

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Q. In those circumstances,
doctor, and again bearing in mind what that level
was, were you not concerned to obtain the views of
the senior physician as to what that level meant?

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A. At that time, under those
circumstances, I was not. Today, I certainly would
be.

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Q. Doctor, were you aware
that Dr. Mancer, first, has testified before the
Commission in these proceedings? Were you aware
of that?

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19

A. Sorry, you will have to
repeat the question.

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Q. I'm sorry. Doctor,
were you aware that Dr. Mancer has been called as
a witness and has testified in these proceedings?

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A. Yes.

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Q. Were you aware prior to testifying yourself, doctor, that Dr. Mancer has testified that, after you received the digoxin level results on Janice Estrella, you held on to the results trying to see Dr. Freedom, and were initially unable to do so? Were you aware that that was his evidence?

A. I was not aware that was his evidence, no.

Q. Did you have any discussion with Dr. Mancer at the time of signing out the final autopsy report in which you suggested that you had tried to bring the results to Dr. Freedom's attention earlier but had been unable to reach him?

A. I don't think I said that. I think I said that I did run into Dr. Freedom and mentioned the result to him. I do not believe that I said I tried to seek him out, because my recollection was, as I have said, it was a chance encounter and I had no strong urgency to get in touch with Dr. Freedom. It was just a chance encounter.

Q. I take it then, that you cannot help us with where Dr. Mancer got the idea that you had been trying to reach Dr. Freedom and



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had been unable to?

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A. I'm sorry, I cannot.

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Q. Doctor, I would like to

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turn for a moment to the leg vein sample that you
took.

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You told us yesterday, as I
understood it, that it was possible that, in that
sample, there might have been included some edema
fluid. Do I have that correctly?

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A. Yes.

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Q. You told Mr. Roland
during that exchange, as I understood it, that
although it was possible, you had tried to take
precautions precisely to minimize the risk of any
contamination. Do I have that correctly?

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A. Yes, that is correct.

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Q. Can you describe for me,

Doctor, what the precautions were that you took when taking that sample?

A. Once I identified the site of the cut leg vein, I cleaned and dried the surrounding tissues; I requested the assistance of Dr. Gillan to milk the leg as had been described; I let a few drops of blood flow out of the vein and then applied the syringe to the flowing blood to try to aspirate as clean as possible the specimen of blood.

Q. And in addition --- I'm sorry, Mr. Commissioner?

THE COMMISSIONER: No, that is all right.

MS. CRONK: Q. In addition to those efforts, Doctor, I take it the choice of the sample site itself was a choice that you made by way of a precautionary concern. In other words, you chose the leg vein, the leg veins from which to take the sample, because that was the site that you thought would yield to you a clean sample.

A. The cleanliness of the sample was only secondary to the quantity of blood that I could obtain. I knew the leg veins would be the only veins in the body that would have any amount of



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2 blood, so that was the main reason I chose those
3 veins.

4 Q. I do have it correctly, do I
5 not though, Doctor, that you told Mr. Strathy yester-
6 day that the leg vein site was the only site available
7 from which you felt you could obtain a clean specimen
8 of blood. Do I have that correctly?

9 A. Yes.

10 Q. Having regard to the precautions
11 that you did take, Doctor, and I accept your evidence
12 yesterday that there is a possibility that that
sample included edema fluid.

13 A. Yes.

14 Q. In all of those circumstances
15 do you think it likely that it did?

16 A. I think that it was minimally
17 contaminated, contaminated to an insignificant degree
that it was a clean sample.

18 Q. Would that view apply as well
19 to the possibility of contamination by ascitic fluid?

20 A. Yes.

21 Q. And by abdominal fluid?

22 A. Yes.

23 Q. Doctor, can we turn then to
24 the pelvic sample which you took. You have told us,
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as I understand your evidence, that because you knew that a number of materials, or a number of drugs elevate after death, that you assumed that that effect might apply as well to digoxin. Do I have that correctly?

7

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A. As I have said I knew that there would probably be changes in digoxin and subsequently I don't know if they are up or down.

10

11

12

Q. I take it then that what you intended, what you meant by that evidence was, that you assumed that death itself might have some effect on digoxin?

13

14

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A. In part, yes.

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Q. Did you not feel, Doctor, having regard to the level that had come back, the 72 nanograms, that there was merit in enquiring to find out whether or not there was such an effect?

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A. In retrospect there would have been merit in trying to review that subject, yes.

Q. But I take it at the time that you didn't?

A. I didn't.

Q. And Doctor, as I understand your evidence, you told us that you also, again as I understand it, you also assumed when you physically



1
2 signed the final autopsy report, that the sample that
3 was being dealt with was the sample from the pelvic
4 cavity, do I have that correctly?

5 A. That is correct.

6 Q. And you have also indicated
7 that at the time of physically signing the final
8 autopsy report you didn't in fact know which sample
9 had resulted in a level of 72 nanograms?

10 A. I didn't know for sure, I
11 assumed it was the larger sample which was the
12 contaminated sample.

13 Q. And if I have it correctly
14 from your evidence yesterday, Doctor, you told
15 Mr. Strathy that you would be very concerned if a
16 level of 72 nanograms resulted from a clean sample
17 from the inferior vena cava, do I have that correctly?

18 A. That is correct.

19 Q. Well having regard, Doctor,
20 to the fact that you did not know which sample in
21 fact had yielded that level of 72 nanograms, I take
22 it it was possible that the level - at least it was
23 possible given the state of your knowledge, it was
24 possible that that level of 72 nanograms had resulted
25 from what you felt to be a clean sample from the leg
veins, that was possible?



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A. It is a possibility, yes.

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Q. And given that possibility,

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Doctor, before signing the final autopsy report,

5

did you not consider there was merit in enquiring

6

to determine which sample was in fact being dealt

7

with?

8

A. I didn't enquire, no.

9

Q. I take it, Doctor, again as

10

you said a moment ago, in retrospect that might be

something that would be done today?

11

A. Yes.

12

MR. SCOTT: Well is Ms. Cronk, having

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distinguished one possibility, now is she going to

14

distinguish for us whether that possibility was

probable or not?

15

THE COMMISSIONER: I am sorry, which

16

possibility?

17

MR. SCOTT: When other counsel have

18

ascertained that something is possible, Ms. Cronk

19

has quite properly gone after it and said, you have

20

said it is possible, but, Doctor, it is not probable

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to any significant degree, is it? She has just

done that about the vein sample.

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She has now established, for her own

23

purposes, that it is possible that the 72 reading

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2 was the leg sample. Is she going to qualify the
3 extent to which that is possible as she does when
4 it serves the other purpose, or is she just going to
5 leave it?

6 MS. CRONK: I have no difficulty,
7 Mr. Commissioner, with that, I thought the two
8 situations were entirely different.

9 Q. Dr. Taylor, with respect to
10 the leg vein sample we know that you personally
11 took that sample.

12 A. Yes.

13 Q. You addressed your mind to the
14 manner in which it could best be taken to avoid the
15 risk of contamination.

16 A. Yes.

17 Q. And you proceeded to take it
18 in that fashion?

19 A. Yes.

20 Q. And on that basis you have
21 offered us your opinion as to the degree to which
22 that sample might have been contaminated?

23 A. Yes.

24 Q. But having taken the samples,
25 I believe your evidence yesterday was that you had
no further involvement with them, they went to the



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biochemistry lab and were assayed?

3

A. That is correct.

4

Q. And your next involvement was

5

when those biochemistry reports came back and you

6

saw the levels?

7

A. Yes.

8

Q. On that basis, Doctor,

9

recognizing the comment that Mr. Scott has just made,
was there any way without enquiry that you could know
which sample had resulted in the 72 nanogram level?

10

11

A. There was no absolute way, no.

12

Q. Thank you, Doctor. Doctor,

13

dealing then with the question of the various

14

contaminants that may have been in the pelvic cavity,

15

you examined these both with Mr. Strathy and with

16

Mr. Roland, and to a lesser degree with Mr. Scott

17

this morning.

18

You have told us, as I understand your

19

evidence, that there were a number of substances

20

which you felt might have operated as contaminants

in the sample drawn from the pelvic cavity?

21

A. That is correct.

22

Q. And the first that you mentioned

23

was edema fluid. You have told us, as I understand

24

it, that Janice Estrella had an edemic condition at

25

D7



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autopsy, do I have that correct?

3

A. She was edematous, yes.

4

Q. Is it probable in your view,

5

Doctor, that edema fluid had been collected in the

6

pelvic cavity by the time you went back to take the

7

sample?

8

A. It is probable there was some

9

edema fluid, yes.

10

Q. I take it that the edema fluid

might or might not have contained digoxin?

11

A. That is correct.

12

Q. And we don't know.

13

A. I don't know.

14

Q. And Doctor, similarly with

15

respect to ascitic fluid, once again do you know as

16

a fact - I am sorry, is it probable in your view

17

that the pelvic cavity did contain ascitic fluid when

you went back to take the sample?

18

A. It is probable it did contain

19

some ascitic fluid, yes.

20

THE COMMISSIONER: But most of it,

21

you said something about ---

22

MS. CRONK: Q. Most of it had been

drained did you say?

23

A. Most of it had been drained

24

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but there was probably some there.

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THE COMMISSIONER: Yes.

4

MS. CRONK: Q. And once again,

5

Doctor, we don't know whether that ascitic fluid

6

itself contained or did not contain digoxin. Do I

7

have that correctly?

8

A. I don't know.

9

Q. When we come, Doctor, to the

10

final autopsy report which you prepared and which you

11

signed, we see there is reference expressly made to

12

two potential contaminants, and those are the two

13

I have just drawn your attention to, that is edema

fluid and ascitic fluid, do I have that correct?

14

A. That is correct.

15

Q. Can you help me, Doctor, if as

16

you have suggested the risk of contamination arose

17

from so many substances that have been reviewed here

18

in your evidence, why is it that the final autopsy

19

report when dealing with the issue of contamination

suggests that the contamination was slight?

20

A. Again poor wording, one doesn't

21

realize that the reports are going to end up in

22

court.

23

Q. Well, Doctor, quite apart from

24

the legal use to which the report might or might not

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D10

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ultimately be put, would this be fair: can I suggest to you that at the time that you prepared the final autopsy report, and you have told us you included a reference with respect to the possibility of contamination?

A. Yes.

Q. The two factors that you then had in mind were the possibility of contamination by edema or ascitic fluid?

A. I don't think the list ended there. I think I recognized that urine and feces in the CSF were possible contaminants, the main ones would be ascites and edema fluid.

Q. And those are the two principal ones that were of concern to you at that time?

A. They were two, probably the two largest contaminating factors, yes.

Q. And when it came to address the degree to which those two main materials might have contaminated the sample, it was described as being slight contamination, that was your view at the time?

A. I don't think I would stress that word "slight" as much as you have stressed it, that is how it was written, I can't argue with that.



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D11

Q. And Doctor, one final point with respect to the final autopsy report. Your attention was drawn to the final sentence of the report by both Mr. Stathy and Miss Kitely yesterday, and it might help you to have it in front of you, as the Commissioner has said perhaps many of us have memorized it overnight.

THE COMMISSIONER: I know it by heart, but you had better have it, it is the Estrella ---

MS. CRONK: Exhibit 91, sir.

Q. To help you, Doctor, the final sentence in the autopsy report reads:

"This level is markedly elevated..." Referring to 72 nanograms level:

"...over the normal therapeutic range and if accurate would explain the death of the patient."

A. Yes.

Q. As I understand it you have said on a number of occasions that that particular sentence was added to the report by Dr. Mancer?

A. Yes.

Q. As I understood your evidence yesterday, you told Miss Kitely that you didn't object strongly to the addition of that last sentence



D12

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by Dr. Mancer?

3

A. That is correct.

4

Q. And that left me with some

5

confusion, Doctor. May I suggest this to you, that

6

the reason that you didn't object strongly to the

7

addition of that sentence is that if the level was

8

accurate, it in fact would explain the death of the

9

child just as the sentence suggests, the sentence

10

was obviously true.

11

A. The sentence is true as it

stands, yes.

12

Q. And Mr. Strathy directed your

13

attention to what the implications would be if the

14

level of 72 was the actual pre-mortem level in

15

Janice Estrella, and I take it that having regard

16

to what you have just said, the suggestion made by

17

Dr. Mancer that the 72 nanograms postmortem level,

18

if accurate, could account for the death of the child
is one that you accept as being true.

19

A. At that time I accepted that

20

statement, yes.

21

Q. You would have some difficulty

22

with that proposition today, Doctor?

23

A. A postmortem level of 72 I

24

think remains to be explained by the pharmacologists.

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D13

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Q. You defer again to their opinion in that regard?

A. Yes.

Q. Doctor, you mentioned in the final paragraph of the autopsy report as well what is described as the toxic range for digoxin 2 to 9 nanograms per millilitre of blood?

A. That is correct.

Q. And I believe in an exchange with Miss Jackman yesterday you indicated that including that range you were concerned with the effects of digoxin, and you were not addressing your mind to death?

A. That is right.

Q. To fatality, is that correct?

THE COMMISSIONER: I took it to be the start of the toxic ranges 5 to 9, isn't that what you meant? Because obviously 10, 11, or 12 is more toxic than 9?

THE WITNESS: Yes. That range was pulled out of a textbook, I can't remember which textbook, but there are different ranges.

THE COMMISSIONER: It means at that point it starts to become toxic, it can't mean 2 to 9 is the toxic range and at 9.2 it ceases to be toxic.



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3 THE WITNESS: I think what it means,
4 sir, is that between values of 2 and 9 toxic effects
5 may be seen.

6 THE COMMISSIONER: And of 9.2, or 10,
7 or 11 I would think it would seen even more clearly,
8 am I wrong?

9 MR. SCOTT: Mr. Commissioner, you
10 will recall the evidence of the cardiologists, that
11 there were cases pre-mortem cases in which toxic
12 figures ---

13 THE COMMISSIONER: Oh, yes.

14 MR. SCOTT: Figures of 9 would not
15 produce necessarily toxic effects.

16 THE COMMISSIONER: I can understand
17 that. Surely the greater the reading the more likely
18 to have toxic effect.

19 THE WITNESS: Well, I think the
20 evidence is that whether there are toxic, obviously
21 100, ante mortem will have a toxic effect.

22 THE COMMISSIONER: Yes.

23 MR. SCOTT: But I think the evidence
24 of the cardiologists who I think are the judge of
25 this, has been that whether there are toxic effects
has nothing to do with the number, but has to do
with what you clinically observe.



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3 THE COMMISSIONER: I have no problem
4 with that at all. All I am really saying, and it is
5 again my complaint about medical language. They
6 say toxic range 2.0 to 9.0 nanograms per millilitre
7 of blood, that is not strictly accurate. Because
8 what they are really meaning to say is that the toxic
9 range, anything within 2.0 to 9.0 indicates that there
10 is toxicity but it - certainly also anything over
11 9.0 indicates the same thing.

12 MR. SCOTT: All I am drawing to your
13 attention is the evidence of the cardiologists is
14 that it doesn't necessarily mean there will be toxicity.

15 THE COMMISSIONER: No, that is
16 another problem, mine is a grammatical problem, or
17 an English language problem.

18 MR. SCOTT: I defer to you.

19 THE COMMISSIONER: Yours is one
20 having to do with the merits of this whole issue
21 which I am not concerned with at the moment.

22 MR. SCOTT: I wish you luck in solving
23 the grammatical problems.

24 THE COMMISSIONER: Thank you.

25 MR. SCOTT: I just wanted to draw
that to your attention. I think my friend's question
has not been ---



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3 THE COMMISSIONER: Oh yes, you can
4 easily have - I don't know whether you can have 10,
5 12 or 100, but you can certainly have 9.0 nanograms
6 per millilitre of blood without any clinical toxic
effects.

7 MR. SCOTT: In Baby A, but which may
8 be toxic or may have toxic effects in Baby B.

9 THE COMMISSIONER: Quite right.
10 However, I ---

11 MR. SCOTT: I just missed a day and
12 I wanted to be sure that this thing has not got off
the rails.

13 THE COMMISSIONER: No, no.

14 MS. CRONK: Mr. Commissioner, you
15 have described your problems with the question as
16 being a grammatical one and Mr. Scott's is one of the
merits. I tell you quickly that mine is both.

17 THE COMMISSIONER: Yes.

18 MS. CRONK: And I would like this
19 witness' evidence on the point.

20 THE COMMISSIONER: Yes.

21 MS. CRONK: If he is in a position
22 to provide it.

23 THE COMMISSIONER: Yes, all right.

24 MS. CRONK: Q. Doctor, you have
25



1
2 included in the final autopsy report what has been
3 described as a toxic range of 2 to 9.

4 A. Yes.

5 Q. And you told Miss Jackman, as
6 I understood it that when that was included you were
7 addressing your mind to the effects of digoxin not
8 to the fatality, not to death?

9 A. That is correct.

10 Q. Doctor, was there in your mind
11 at that time a range, a threshold number from which
12 the effect would be fatal?

13 A. I had no such number and I
14 have no such number.

15 Q. Fine, Doctor. So when you
16 included the 2.9 range I take it you were talking
17 about that range in the context of when one might
18 expect to see toxic effects?

19 A. That is correct.

20 Q. And I take it that we have
21 no difficulty in agreeing that carried to its
22 logical extension, and given a sufficiently high
23 concentration of digoxin, a high enough level, the
24 toxic effects might indeed be fatal.

25 A. I agree with that statement.

Q. But you can't help us as to what



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that differential might be?

A. No.

Q. Finally, you told Mr. Young as I understood it yesterday, during the course of your evidence, that you had never taken a blood specimen for digoxin assay before the case of Janice Estrella?

A. An autopsy specimen, no.

Q. Do I have that correctly?

A. That is correct.

Q. I take it however, Doctor, that during the course of some 150 odd autopsies, 140 to 150 that you performed at other hospitals, you have had many an occasion to draw a blood sample, be it for hematology purposes or subsequent test on autopsy?

A. Yes.

Q. And the taking of a blood sample was not a strange matter to you?

A. No.

Q. And Doctor, finally with respect to the question of potassium that was raised with you this morning by Mr. Scott.

A. Yes.

Q. One of the suggested facts that



1
2 he put to you was the situation in which an autopsy
3 is conducted some 24 hours after death.

4 A. Yes.

5 Q. And a potassium level of 10 or
6 11 results. As it happens those facts bear a great
7 similarity to the facts in the case of Kevin Pacsai.
8 I take it, Doctor, you had no involvement in the
9 autopsy of Kevin Pacsai?

10 A. Fortunately not.

11 Q. Do you know, Doctor, what the
12 antemortem potassium level in the case of that child
13 were?

14 A. No, I don't.

15 Q. Do you have any knowledge as
16 to what the clinical history of that child was prior
17 to his death?

18 A. No, I don't.

19 Q. One final question, Doctor.
20 I think I am correct in this and I ask you to confirm
21 it if I am. I take it the potassium is the substance
22 that is naturally produced by the body?

23 A. Yes.

24 Q. Thank you, Doctor. Thank you
25 for your patience. I have no further questions.

THE COMMISSIONER: Thank you.



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Mr. Scott?

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MR. SCOTT: Mr. Commissioner, as the Doctor has come so far can I ask two questions? The first question is probably technically improper but rather than call him myself I ask to ask it now.

7

THE COMMISSIONER: Yes.

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MR. SCOTT: It arises out of my friend's questions about whether the Doctor knew that there was digoxin in the ascitic and edema fluids and the feces and the urine. He said that he didn't know that. I want to pursue a line that she followed and ask about the likelihood of that.

13

14

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The second thing arises directly out of her reply, and that has to do with the answer the Doctor gave about his statement ---

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THE COMMISSIONER: The likelihood of the presence of digoxin in or - I am not really going to pay an awful lot of attention to what he says, it is really the pharmacologists who would know better, would they not.

20

21

MR. SCOTT: Well, this doctor did the autopsy and my friend is --

22

23

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THE COMMISSIONER: But he has no way, there is nothing in the autopsy, there is no way he can tell whether there is digoxin in tissue or anything



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2 except by taking a test, am I not right about that,
3 Doctor, there is nothing that would tell you ---

4 MR. SCOTT: Well, that is what I
5 want to ask about, I think there is something that
6 will tell him.

7 THE COMMISSIONER: It certainly would
8 be of interest if there is some way we know that.

9 MR. SCOTT: All right, can I pursue
10 that question?

11 THE COMMISSIONER: Yes, ask that
12 question please.

13 FURTHER RE-EXAMINATION BY MR. SCOTT:

14 Q. Doctor, we know that the
15 Baby Estrella during life was administered digoxin?

16 A. Yes.

17 Q. And you knew that at the time
18 of the autopsy?

19 A. Yes.

20 Q. Now I take it that you knew
21 at the time that digoxin taken during life distributes
22 throughout the body?

23 A. Yes.

24 Q. And that it may distribute
25 unevenly among the various parts of the body, that
is in different levels?



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A. I didn't know the distribution
but I knew that it probably was unevenly distributed,
yes .

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Q. And I take it therefore that
when you knew there was ascitic - when you obtained
ascitic and edema fluid you didn't precisely know
the extent to which digoxin might have permeated
those tissues?

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A. That is correct.

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Q. Or to those fluids; but I
suggest to you that you knew that if digoxin had been
taken, digoxin of some quantity would be found in
those fluids?

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A. Yes, almost certainly, although
I have no experimental proof of that.

Q. All right. So almost certainly.
Now, when we come to fecus and urine, I take it you
knew that digoxin exits the body through urine and
feces?

A. Yes.



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Q. And therefore you knew that if digoxin had been taken in life by this baby that in due course it would exit the body in that fashion?

A. Yes.

Q. And I therefore put it to you that at the moment you did the autopsy you knew as a matter almost of certainty that there would be digoxin readings in feces and urine?

A. Yes.

Q. You didn't know at what level but as a certainty they would be there?

A. Yes.

THE COMMISSIONER: I am not sure that that is absolutely correct. Now, I am now giving evidence but it depends a great deal of course upon what they call the life of digoxin and the half life and whether it will all have vanished or whether it didn't. Strictly speaking the Doctor did not know at any point, because he didn't know at that point when the digoxin had last been given.

MR. SCOTT: No.

THE COMMISSIONER: So he couldn't know. If this is for the purposes of argument later that the Estrella readings could well have been contaminated I can understand it but I don't know whether the



2 Doctor could possibly know.

3 MR. SCOTT: Well, Mr. Commissioner,
4 what he knew ---

5 THE COMMISSIONER: I am sorry, I now
6 have Miss Cronk on her feet.

7 MS. CRONK: Well, I am on my feet for
8 perhaps the obvious reason and, that is, I thought
9 the witness' evidence in this matter was entirely
10 clear and I think Mr. Scott is recovering, going
11 over ground that has been covered any number of times.

12 MR. SCOTT: Well, obviously, Mr.
13 Commissioner, there is a misunderstanding between
14 you and me which might be worth clearing up, it may
15 not I don't know. But what we know about this case,
16 about Estrella, the Baby Estrella was that some
17 time during life digoxin was given to the baby.

18 THE COMMISSIONER: Yes.

19 MR. SCOTT: We know that at the post
20 mortem there was digoxin remaining in the body in some
21 quantity because that's what the postmortem levels
22 read.

23 MR. MARSHALL: I just want to say,
24 Mr. Commissioner, if we are going to be talking
25 about this ad infinitum, as we have before, shouldn't
we also be talking about the fact this baby, so far



1
2 as the record was concerned, didn't receive any
3 digoxin at all for four days prior to death.

4 THE COMMISSIONER: Well, that was
5 part of what ---

6 MR. SCOTT: Well, that would be a
7 factor and that is worth considering.

8 MR. MARSHALL: This has all been
9 covered.

10 THE COMMISSIONER: The only remaining
11 quarter of the field we haven't heard from is now
12 about to say something. Yes, what do you want?

13 MR. YOUNG: Mr. Commissioner, if we
14 are going to recall this Doctor's evidence we should
15 recall that he said that if there was no digoxin
16 given for four days I would assume there would be
17 no digoxin in the bowel and he went on to comment
18 about the fact that there wouldn't be any problem
19 with contamination. So, I don't see the purpose of
20 this re-cross-examination.

21 THE COMMISSIONER: No, all right.

22 MR. MARSHALL: It is all because
23 Mr. Scott wasn't here yesterday.

24 THE COMMISSIONER: Well, no it isn't,
25 no it isn't. Have you something further?

MS. CRONK: I have but one final



1
2 question.

3 THE COMMISSIONER: Well, would you
4 hold it for just a moment.

5 MS. CRONK: Yes I will, sir.

6 THE COMMISSIONER: And we will have
7 Mr. Scott finish his examination.

8 MR. SCOTT: I have asked the questions
9 and got the answers. I am content to leave it there.

10 THE COMMISSIONER: All right.

11 MR. SCOTT: Except, Mr. Commissioner,
12 you said that you didn't think it was right.

13 THE COMMISSIONER: Well, it isn't as
14 simple as the way you put it. It is not as simple
15 that because the child had been fed digoxin there
16 would necessarily be digoxin in every tissue of the
17 body; there might or there might not be.

18 MR. SCOTT: Can we go this far.

19 THE COMMISSIONER: It was left only
20 this far that the Doctor didn't know or couldn't know
21 and doesn't know now.

22 MR. SCOTT: Well, no, it is more than
23 that. Let me put it to him this way and see if
24 he agrees or disagrees.

25 Q. Doctor, if at the time of
your postmortem examination there was digoxin in the



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body?

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A. Yes.

4

Q. Do you understand the assumption?

5

A. Yes.

6

Q. And your reading of the post-mortem level showed some digoxin in the body?

7

A. Yes.

8

Q. If there was digoxin in the body at that time, I take it your knowledge would be that that digoxin would be distributed throughout the tissues and fluids of the body in uneven proportions?

11

A. Yes.

12

Q. All right. So that therefore if you obtained edema fluid at a time when there was digoxin in the body, that edema fluid would contain digoxin?

15

16

A. I would expect it contained digoxin.

17

18

Q. Yes, probably.

19

A. Yes.

20

Q. To a high degree of certainty?

20

A. To my knowledge, yes.

21

22

Q. Yes. Ascitic fluid found in the body at the time when there was digoxin elsewhere in the body would probably to a high degree of

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certainty contain digoxin?

3

A. To my knowledge, yes.

4

Q. Yes. And I take it that that
goes in spades for feces and urine?

5

A. Yes.

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Q. Excuse the bridge reference
but you know what I mean?

8

A. Yes.

9

10

Q. Because they are the exit
agents of digoxin?

11

A. Yes.

12

Q. All right. Now, that's all
I had, Mr. Commissioner.

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THE COMMISSIONER: All right. Now,
Miss Cronk.

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MS. CRONK: Thank you.

16

FURTHER RE-DIRECT EXAMINATION BY MS. CRONK:

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Q. Doctor, just two final
questions. I take it in light of the exchange this
morning and your exchange with Mr. Olah yesterday
you now know that this child had not received
digoxin for four days prior to death?

21

A. Yes.

22

23

Q. All right. If I understood
your evidence correctly as well, Doctor, that given

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2 those facts that you had indicated to Mr. Olah
3 yesterday that you thought it was unlikely that the
4 urine at the time of autopsy would contain any
5 digoxin?

6 A. Yes, bearing in mind that
7 I don't have a figure for the half life of digoxin.

8 Q. All right. But bearing in mind
9 as well that the child hadn't received digoxin for
10 four days?

11 A. Right.

12 Q. And the same thing you have
13 said you thought was true with the high probability
14 of the bowel?

15 A. Yes.

16 Q. All right. And then finally,
17 Doctor, with respect to the issue of all of these
18 contaminants, the edema fluid and the ascitic fluid
19 and whether or not they contained digoxin, I think
20 we are clear are we not that you do not know what
21 effect that might have if they did contain digoxin,
22 what effect that might have on a postmortem digoxin
23 level?

24 A. That's correct.

25 Q. Right, thank you, Doctor, no
further questions.



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MR. OLAH: Excuse me, Mr. Commissioner, since some of this arises out of my questions, may I ask one or two questions to clarify something?

MS. CRONK: Surely this must end, sir, at some point.

THE COMMISSIONER: I think it has got to end somewhere. The reason I have allowed it to go on thus far, if it is a question on digoxin though surely I can't be unfair to you though and only to you and bend over backwards to everybody else but you must realize this is not an expert on digoxin.

MR. OLAH: It has nothing to do with digoxin.

THE COMMISSIONER: Well, what ---

MR. OLAH: A simple question.

THE COMMISSIONER: Well, tell me what the question is.

MR. OLAH: What I wanted to know was whether in fact, I notice in the autopsy report that the fluid in the peritoneal cavity was measured. The question was going to be whether all of that fluid was measured and removed at the time the autopsy was completed and whether the Doctor would have thought that there would be any substantial amounts recurring in the half an hour when he returned to take the



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sample. That was the simple question.

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THE COMMISSIONER: I'm not even sure I understand the question. Do you understand the question?

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THE WITNESS: Yes, I think I do.

7

THE COMMISSIONER: Can you answer it quickly, quickly and not prompt another question.

8

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THE WITNESS: The 50 mls figure was derived by removing the fluid. There was some fluid that I couldn't easily remove. That remained. I suspect it would be 5 mls or 10 mls at the most.

12

MR. OLAH: And similarly with the edema fluid?

13

14

THE WITNESS: The edema fluid I didn't remove any because it weeps out of the tissues.

15

MR. OLAH: Thank you.

16

17

THE COMMISSIONER: I'm hoping you will say no and I am hoping that you are rising for some other purpose.

18

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MR. SCOTT: Well, if the question is answered that is the question that I could only ask with your permission. The second question I want to ask arises directly out of Miss Cronk's re-examination.

22

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THE COMMISSIONER: Well, that normally is not permitted.

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MR. SCOTT: Well, she put to the Doctor a statement he made and that appeared for the first time as I understand it in re-examination. The Doctor made a reference to the atmosphere in which that note was dictated. Now, he may be recalled in Phase II but if not I want to ask him about that.

MR. YOUNG: Mr. Commissioner?

THE COMMISSIONER: Yes.

MR. YOUNG: You might recall that during my cross-examination of this witness there was a discussion about the atmosphere. It was a weekend in question but I think it stretched even beyond that point in time that he created or signed the Cook autopsy report. So, I think we have covered this prior to the re-cross-examination, or whatever we will call it, of Miss Cronk.

MR. SCOTT: Well, if that is so I will withdraw it. I thought the statement hadn't been mentioned until this morning.

THE COMMISSIONER: Yes, all right. Well, before you change your mind about withdrawing it we are going to withdraw now. Doctor, please leave as soon as you can.

THE WITNESS: Thank you.

---Witness withdraws.



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THE COMMISSIONER: We will take

20 minutes.

---Short recess.



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--- on resuming.

MS. CRONK: Mr. Commissioner, Dr. Cutz is now with us. Unfortunately, his counsel are not.

THE COMMISSIONER: Well, I am not going to wait for them. There is no reason why that should happen. So, you just proceed.

ERNEST CUTZ, Resumed

DIRECT EXAMINATION BY MS. CRONK (Continued):

THE COMMISSIONER: I would just like to say this, and I think I should say this, when I put the matter over for twenty minutes. I mean that I am going to be back in twenty minutes, and I expect whatever counsel is examining and the witness to be here in twenty minutes. If somebody makes off with the witness, it is not his fault that he finds it impossible to be here, but it just should not happen.

So, I do not know who is responsible. I am not pointing a finger at anyone because I do not know and I do not want to know but, if it happens again, I may do some more careful investigation.

Now, Miss Cronk.

MS. CRONK: Thank you.



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Q. Now, Dr. Cutz, when you were last here, you will recall that we reviewed your involvement in a number of the autopsies which had been conducted at the Hospital and, before moving on to the case of Allana Miller, which is the next subject, there are two matters I wish to raise with respect to Kevin Pacsai.

You will recall we discussed your involvement in that autopsy.

A. Yes.

Q. Do you recall, doctor, when you were last here, telling me that Dr. Fowler came to see you on March 18th regarding the digoxin levels which had been recorded in respect to Kevin Pacsai?

A. Yes.

Q. Do you recall testifying that he told you that he wanted to check the dosages of digoxin in the medical record of Kevin Pacsai because he needed that information for the Risk Management Committee, which you testified he said was investigating the incident? Do you recall that?

A. Yes.

Q. Can you tell me, doctor, what did Dr. Fowler tell you was being investigated



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by the Risk Management Committee?

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A. I cannot remember precisely but one fact is that he requested the chart. Whether he actually said that he wanted to review the drug levels, I am not certain about that, but that was my impression; that that was the reason he wanted to review the chart.

In terms of the Risk Management Committee, I think he did mention that this is being -- or one reason he wants to review it is for the report to the Committee.

Q. Did you know why the Risk Management Committee was investigating the matter?

A. I think, in any incident in hospital, when there is an accident or misadventure or some unusual happening, then such a committee would be looking into it.

Q. In this case, I take it the unusual happening would be the digoxin level which had been recorded post mortem?

A. That is correct.

Q. Did Dr. Fowler indicate to you whether or not the Committee had already met in respect to Kevin Pacsai?



Cutz
dr.ex. (Cronk)

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A. I cannot recall.

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Q. Did he indicate to you,

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to the best of your recollection, doctor, when the
Committee was scheduled to meet to discuss the
matter?

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A. I do not remember.

7

Q. Were you subsequently

8

involved in any meeting or meetings that the Risk
Management Committee might have held to discuss
this child's death?

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A. No, I was not.

11

Q. Were you approached for

12

any information from any member of the Committee
with respect either to the digoxin levels or the
child's death?

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A. I was not but I assumed,
since that was a Coroner's case, the information
from a Coroner's autopsy could not be revealed until
either a report is completed and/or it is cleared
with the Coroner.

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Q. Do you know, in fact -

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you may not, doctor, but do you know, in fact, whether
the Risk Management Committee at the Hospital did
meet to discuss this child's death and, if so, when?

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A. I do not know.

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Q. Thank you, doctor.

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May we turn then to the case of

4

Allana Miller.

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As I understand it, doctor, you
performed this autopsy?

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A. No, I did not. I could

7

get my notes.

8

Q. I'm sorry, did you

9

supervise this autopsy?

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A. That is correct, yes.

11

Q. And I take it that the

12

resident involved was Dr. Glen Taylor?

13

A. Yes.

14

Q. And Dr. Taylor personally

conducted the gross autopsy?

15

A. That is correct, yes.

16

Q. As I understand it from

17

prior evidence, doctor, Allana Miller died on

18

March 21, 1981 and the autopsy was conducted later

19

on the same day. Were you personally present when

20

Dr. Taylor conducted the gross autopsy?

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A. Yes, I was.

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Q. And did you have an

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opportunity to review the medical record of the

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child before the autopsy was commenced?

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A. I reviewed the chart after Dr. Taylor briefed me on his review, and I would have probably just leafed through it rather than examining it at any great length.

Q. Do you recall now, doctor, what matters Dr. Taylor brought to your attention, based on his review of the medical record?

A. It was quite apparent from the clinical notes that the child had a complex congenital heart disease which had been diagnosed by clinical methods, catheterization and other techniques, and that it had a number of clinical symptoms for which the baby was admitted to the Hospital. One, was fever - the baby had a fever. The baby had seizures. In our belief, the baby was also scheduled to have corrective surgery performed.

Q. Doctor, before the gross autopsy was actually commenced, was there any discussion, of which you are aware, as to whether or not the death of this child should be reported to the Coroner?

A. From the reading of the chart, there was nothing unusual which, to me, would have indicated a reason to report this to the Coroner.



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Q. I take it then, doctor, there was no discussion of which you are aware amongst Dr. Taylor, yourself or any member of the Cardiology Division concerning the reporting of this death prior to the gross autopsy?

A. I cannot recall whether I discussed this with Dr. Taylor but, at the time, I was busy with another case, which was a Coroner's case, and I was more concerned with that case.

Q. At the time this autopsy was being conducted, having regard for the fact that Dr. Taylor, as a resident, personally did the autopsy, I take it that, insofar as you were aware, it was not a Coroner's case at that point in time?

A. No, it was not.

Q. Doctor, based on the results available after the gross autopsy, was there then evidence or indicator which appeared in gross autopsy which, in your opinion, were sufficient to account for the child's death?

A. The gross autopsy confirmed the clinical findings in terms of the finding of congenital heart disease. It revealed some additional findings which would have put this case into a so-called polysplenia complex or polysplenia syndrome.

Q. Can you explain what you



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mean by that, doctor?

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A. Certain types of congenital heart disease occur in combination with multiple congenital defects, and this indicates some kind of an abnormality occurring early in embryonal life. Usually, these types of congenital heart defects are much more severe; so, those usually are the complex ones.

Q. Is that combination, congenital heart defect with a series of malformations, called the polysplenia syndrome?

A. That one of the syndromes you can have. It is called polysplenia because these babies usually have multiple spleens instead of having one, as normal person would have.

Q. And Allana Miller, I take it, had multiple spleens?

A. That is correct.

Q. And that was evident after the gross autopsy?

A. That is correct.

Q. Was anything else revealed at the gross autopsy which you felt was significant in terms of attributing the cause of death to any --

THE COMMISSIONER: Sorry, what is



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1
2 wrong with multiple spleens?

3 THE WITNESS: It is an indication
4 of some event early in the embryonal life. So, in
5 addition to having multiple spleens, you find some
6 other -- or, once you find it, then you are looking
7 more closely for the other associated anomalies,
8 which this baby had. For instance, it had a
9 symmetrical lobation of the liver. In other words,
10 usually, you can distinguish between right and
11 left lobes of the liver. In a case like this, they
12 look symmetrical. The same way, the branching of
13 the airways in the lungs is different from normal.
14 This probably explains some kind of a defect in
15 the rotation of the viscera during embryonal
16 development. So, these kinds of babies would have
17 a type of cardium malformation, which would be one
18 of the most severe ones.

17 MS. CRONK: Q. On the basis of
18 those findings after gross autopsy, doctor, was
19 there, in your opinion, an anatomical basis or
20 reason for this child's death?

21 A. Well, as I mentioned, we
22 confirmed the heart disease we found, with other
23 anomalies. We did not find, however, precise
24 anatomical cause. In other words, something like a
25 recent hemmorrhage, trauma, hemmorrhage in the brain;



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something which could immediately explain why the child died.

Q. I take it then there was nothing from an anatomical or pathological point of view that accounted for sudden death?

A. I'm not sure whether the death really can be called "sudden" but, certainly, there was nothing which we could pinpoint in terms of anatomical death after the gross autopsy.

Q. I take it, doctor, that there were a number of samples taken for later microscopic study?

A. That is correct.

Q. Did you participate in the conduct of the microscopic examination?

A. Yes. I reviewed the slides with Dr. Taylor, including all of the other results, when we received these.

Q. When the slides came back and were reviewed by you and Dr. Taylor, was there any evidence at that time of infection or any other condition which would account for the fever that had been suffered by the child?

A. I believe there was no evidence of infection as revealed by culture and/or



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microscopic examination, but there were some other changes which, again, would not have been apparent on gross examination. For instance, the child had severe changes of pulmonary hypertension, and this is a change, again, which happens in babies with congenital heart disease; pathological changes in the vessels supplying the lung. This is a microscopic finding. So, there would be narrowing and destruction of vessels within the lung.

Q. Was that sufficient, doctor, in your view, to account for death?

A. It is not considered as an acute cause of death, but I think there are cases described where the mechanism is unknown but you can have sudden death occurring in people with severe pulmonary-heart condition.

Q. Was it your view in this case that, based on the microscopic examination, Allana Miller had died for that reason?

A. We could not be absolutely certain but this might have been a factor.

Q. Was there anything else that presented itself, as a result of the microscopic examination, that had been unknown to you as a result of the gross autopsy?



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A. In the gross autopsy, the other findings which, again, we confirmed by microscopy, was the evidence of congestive heart failure, which you would see in the liver, lung, kidney and other organs. In addition, the liver showed some degree of fatty change, and this would be a sign of hypoxia in the baby sometime before. So, there were some minor findings confirming that the child had suffered from a chronic congestive heart failure.

Q. I take it then, doctor, that, on the basis of those findings, given the reservations you have expressed as to the implications of the pulmonary hypertension, there was still no clear anatomical cause of death after the microscopic examination had been completed?

A. Yes. I would like just to specify that it depends how strict the criteria one uses in terms of the anatomical diagnosis, and I can tell you, we use one of the strictest. You see, you could call this death due to heart failure and that would end there. It gives you a word, cause of death - heart failure - and this is what one could call such a case, but it does not tell you and pinpoint exactly what made -- the child had heart failure



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the day before and it had the same thing when it died. So, it may be acceptable to some pathologists in some hospitals.

Q. But it was not to you?

A. That is correct.

Q. Doctor, before the gross autopsy was commenced, were you aware that a sample for digoxin assay had been requested?

A. Yes.

Q. How did you become aware of that?

A. I think, after talking to Dr. Taylor, he mentioned that he had been -- let me just think a bit. No. I think, before the autopsy was started, I told Dr. Taylor that it might be a good idea to take a sample for digoxin in this case, having in mind the Pacsai case, which was just recently done, and the Estrella case.



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It was to, or try to see from a scientific point of view to gain some information as to what happens with digoxin post mortem, because so far we only had one or two levels, we didn't know what it means.

In addition to taking samples from Miller I also took a sample from the medical/legal case I was doing, a baby who did not receive digoxin and died suddenly at home, it was kind of a control, if you like.

Q. That was the autopsy that you conducted that morning?

A. That is correct.

Q. And I take it then, Doctor, that by the time the autopsy on Allana Miller was being conducted on the 21st, in light of your prior evidence, you knew obviously the Pacsai levels and you knew as well of the Estrella levels?

A. Yes.

Q. And it was as you suggested as a result of that knowlege and those levels that you requested that a sample be taken from Allana Miller?

A. Yes. Now when I mentioned this to Dr. Taylor he told me he already had been asked by the clinicians, I can't recall exactly the name he



1
2 mentioned, it could have been Dr. Costigan, who
3 mentioned he should be taking some samples for
4 digoxin.

5 Q. Did he tell you why Dr.
6 Costigan had requested a sample to be taken for
7 digoxin?

2 8 A. I am not certain if he gave
9 any reason. I do not recall there would have been
10 anything in the chart. One thing we note is that
11 the child did receive digoxin as part of the treat-
12 ment.

13 Q. You noted that prior to gross
14 autopsy?

15 A. Yes.

16 Q. I take it then, Doctor, that
17 you independently of Dr. Costigan suggested to Dr.
18 Taylor that a sample be taken?

19 A. That is correct.

20 Q. Did you yourself have any
21 discussion with Dr. Costigan once you learned that
22 he had ordered the sample to be taken?

23 A. No, I did not. In fact I
24 didn't see him talking to Taylor, or he was not in
25 the autopsy room, and as I mentioned I was pre-
occupied with this other case. So that I didn't see



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Dr. Costigan for any explanation.

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Q. Did you have any other

discussion with any other member of the Cardiology
Division with respect to the taking of samples for
digoxin assays on the child?

A. No, I did not.

Q. And I take it, Doctor, that

sitting here today you have no clear recollection
as to what Dr. Taylor might have told you as to why
Dr. Costigan wanted that sample to be taken, is that
correct?

A. I have no precise recollection
what the reason was, no.

Q. Doctor, were you then

personally present when the samples were taken?

A. Yes, I was.

Q. Did you take them, or did Dr.

Taylor?

A. Dr. Taylor took the samples.

Q. Was it one sample or more than
one?

A. Well the blood was drawn from
the inferior vena cava, this is the usual site, as
I explained before where we would take the blood
sample for culture.



Cutz, dr.ex.
(Cronk)

Q. Yes.

A. So that the same sample can be used for two purposes. As far as whether one or two tubes were used I am not really sure, but definitely a sample was labelled and sent with the intention to be assayed for digoxin.

Q. And sent to the laboratory in the Hospital?

A. That is correct.

Q. Doctor, were any sterilization procedures followed, undertaken, before the sample was taken to the best of your recollection?

A. That would normally be done, yes.

Q. Do you recall whether or not it was done in this case?

A. I cannot be absolutely certain but I expect it would have been done if the culture was taken as well.

Q. What method was used by Dr. Taylor to withdraw the blood from the inferior vena cava, how did he physically do that?

A. He would use a needle and a syringe.

Q. Do you recall specifically that



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he used a syringe with a needle?

A. Yes, that is correct.

Q. Was that inserted directly into the mouth of the inferior vena cava?

A. It is piercing through the inferior vena cava which is unopened.

Q. Doctor, I take it that you observed the taking of that sample?

A. That is correct.

Q. Was there, in your view, on the basis of the sterilization effort that had been undertaken and the method used by Dr. Taylor to take the sample, any risk that the sample had been contaminated?

A. I wouldn't think so.

Q. I take it, Doctor, that at some subsequent point you were informed as to the results of the assay that had been run on that sample?

A. I am not certain when I learned about the level, because as you recall this was on the Saturday, the 20th and then there was the 21st and all the events started.

THE COMMISSIONER: Friday was the 20th.

MS. CRONK: Q. Saturday was the 21st,



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Doctor.

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A. Yes, the 21st, excuse me.

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THE COMMISSIONER: None of the results were known to others, am I wrong on this, that night of the 21st?

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MS. CRONK: No, 8:00 p.m. that evening.

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THE COMMISSIONER: That is the 20th.

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MS. CRONK: The 21st, Saturday the 21st at 8:00 p.m., sir.

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THE COMMISSIONER: Yes, all right, thank you.

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THE WITNESS: They might have been duplicate samples. In other words there might have been a sample taken on the ward which would be sent from the ward, and that would be an urgent type of sample which they would do on a staff basis. I am not sure how long the test takes, but you know, they would report on that kind of a sample as soon as possible. Whereas an autopsy sample would be delayed, or in other words it would be put aside to do at a later stage, it wasn't urgent.

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Q. That would be in the normal course I take it?

23

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A. That is right.



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2 Q. Well first with respect to
3 your knowledge of the level, we know that the level
4 that was reported by the Biochemistry Department
5 was 78 nanograms?

6 A. Yes.

7 Q. Do you recall now when you
8 learned of that level?

9 A. I have the report which is
10 appended to the - this is the report from the
11 Biochemistry, it is dated the 24th of March, 1981.

12 Q. That would make it the
13 following Tuesday, Doctor.

14 A. Yes.

15 Q. Doctor, do you have any
16 recollection of learning that Saturday, either in
17 the afternoon or in the evening, the result of the
18 assay that had been conducted?

19 A. No, I did not know what the
20 results were, no.

21 Q. Doctor, if you would turn with
22 me if you would, do you have the medical record of
23 Allana Miller there, it is Exhibit 115. Would you
24 turn with me to page 52, if you would, this is the
25 final autopsy report that was prepared on Allana
Miller.



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A. Yes.

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A. Yes.

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Q. That would make it approximately
9:27 in the morning?

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A. Yes.

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Q. Doctor, how long did the
autopsy procedure itself take?

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A. It would have been a relatively
long autopsy because of the extent of these anomalies
and requirement to document them, for instance
photographs would have to be taken, and things like
that. So I would think it would be two to three
hours autopsy, or more.

17

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Q. So possibly it was 12 noon
or a little after that by the time it was completed?

19

A. Yes.

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Q. And was the sample which Dr.
Taylor had drawn sent immediately to the Biochemistry
Laboratory?

22

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A. No, that would be collected
early during the autopsy in the beginning of it.

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Q. Yes.

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A. And then it would just be kept
in the autopsy room and it would be sent over after
completion.

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Q. So it wouldn't have gone down
to the laboratory until the autopsy had been
completed?

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A. That is correct.

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Q. To the best of your knowledge,
Doctor, had Dr. Costigan when he spoke with Dr.
Taylor and requested the sample to be taken, had he
indicated to Dr. Taylor that there was any urgency
in obtaining the results on that sample?

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A. Yes. As I mentioned before
I don't recollect what Dr. Taylor was told precisely
and the only recollection I have is that he had been
asked to take a sample.

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Q. Doctor, you have told me that
in the normal case an autopsy sample might not
receive the urgent processing that a sample from the
ward might receive. I take it that is obviously
because the sample from the ward under normal
circumstances has to do with a living patient and
the information is required by the clinician?

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A. That is correct.



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Q. Was there in your mind, for whatever reason, any urgency which attached to the assay of the postmortem sample that had been done on Allana Miller?

A. No I had no feeling that there would be some urgency about it or something unusual.

Q. Thank you, Doctor. Doctor, if we could turn then and look at the final autopsy report, I take it that it bears your signature on the first page along with Dr. Taylor's?

A. Yes.

MR. SCOTT: I have lost the page number, Miss Cronk.

MS. CRONK: Page 52.

MR. SCOTT: Thank you.

MS. CRONK: Q. Doctor, am I correct as well that the findings, the principle findings available on the basis of the full autopsy are set out in the anatomical diagnosis section of the report?

A. That is right.

Q. And your primary finding, and correct me if I am wrong, was digoxin toxicity, having regard to the postmortem serum digoxin level of 78



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nanograms?

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A. That is correct.

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Q. That was the predominant

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finding?

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A. That was the most significant

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in terms of all the other investigations we did.

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Q. And if we turn, Doctor, to

9

the next page, in the final paragraph we see there

10

a discussion with respect to the postmortem samples,

11

and you have indicated in the final autopsy report,

12

as I understand it, that the level in your view was

13

A. Yes.

14

Q. You have also indicated that

15

the level accounted for the immediate cause of

16

death, the level, the presence of digoxin at that

17

level was the immediate cause of death of this

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A. Yes. I think it reads:

19

"This level of digoxin is well above

20

the toxic range for this drug and can

21

account for the sudden episode of

22

bradycardia and cardiac arrest."

23

Q. If we keep reading, Doctor,

24

do we see also:

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"All cardiovascular and respiratory
pathologic changes are considered
chronic."

5

And then this sentence:

6

"Immediate cause of death is digoxin
toxicity."

7

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A. Yes.

9

Q. I take it that was your opinion
at the time?

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A. Yes.

11

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Q. And if we examine the previous
paragraph, Doctor, again on page 2 of the final
autopsy report some of the other findings which were
evident as a result of the autopsy are dealt with.
You indicate there that the major findings as a
result of the autopsy were related to the cardiovascular
respiratory systems of the child?

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A. Yes.

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Q. Again you set out, as you told
us earlier, the congenital heart disease that Allana
Miller suffered was confirmed by virtue of the
autopsy with various complicating features?

22

A. Yes.

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Q. And you have set those out in
full under Item No. 2 of your Anatomical Diagnosis on



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page 1?

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A. Yes.

4

Q. Item No. 3, you draw a

5

reference to the pulmonary hypertension which you

6

indicate was evident as a result of the microscopic
examination?

7

A. That is correct.

8

Q. You indicated in the autopsy

9

report as well, Doctor, that all the cardiovascular

10

and respiratory pathological changes which were

11

evident as a result of the autopsy were considered
chronic?

12

A. That is correct.

13

Q. What do you mean by that,

14

Doctor?

15

A. Well chronic means that they

16

have been there for some time prior to death.

17

Q. I take it then Doctor, that

18

those findings themselves would not account for this

19

child's death in your view?

20

A. They might account for death

21

except it is not something which you can, as I

22

mentioned before, pinpoint. If I take an example

23

of say arteriosclerosis in an older patient, which

24

I would then compare with a rusting pipe. If the

25



1
2 rusting pipe bursts you get leakage and death, but
3 you can still have a patient die without rupturing
4 the pipe, and the diagnosis or cause of death would
be called arteriosclerosis.

5 Q. Well, Doctor - I am sorry.

6 A. So if you can document that
7 sort of a final event which you can directly
8 correlate why the patient died at that particular
9 moment then you have very good uncontestable cause of
10 death.

11 Q. I take it with the exception
12 of that digoxin toxicity factor, that there was no
uncontestable cause of death in this case?

13 A. That is correct.

14 Q. Doctor, was there on the basis
15 of the reviews which you conducted at autopsy, any
16 pathological or anatomical evidence that this child's
17 kidneys had malfunctioned, or that she was suffering
from renal failure?

18 A. We were just checking the
19 description, there were no gross changes of the
20 kidneys, and the microscopic of the kidneys is
21 described as being not remarkable.

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Q. So, I take it then, Doctor,
neither at visual observation and examination at
gross autopsy nor as a result of the microscopic
examinations which had been conducted was there any-
thing out of the usual observed with respect to the
kidneys?

A. No, we couldn't say that there
were any observable changes. That does not necessarily
mean there was no renal failure.

Q. All right.

A. It is something you need a
certain time to elapse before you see changes. So,
it is a sudden death from maybe renal failure yet
you might not see it microscopically.

Q. I see, Doctor.

A. So, this is not entirely rule
of thumb and then you have to look at the clinical
history to see whether renal failure was or wasn't
present.

Q. Does it follow from that,
Doctor, that if during the course of life a patient
was noted clinically to be experiencing renal failure
or difficulty with the renal function, that you as
a pathologist would expect some indicia of that
difficulty to start to present themselves in an



H2 1
2 anatomical sense?

3 A. Yes. There are certain
4 conditions especially if the renal failure is of
5 long duration which would manifest itself by changes
6 in the kidneys. There may be various reasons for it,
7 anatomical reasons like the glomeruli, which are the
8 filtering parts of the kidney may be shrunken down
9 or may show some changes or there is some abnormality
10 in the kidney tubules which collect the urine.

11 Q. Yes.

12 A. So, there is a number of
13 changes you might see in renal failure, especially
14 if it is a chronic one. In acute renal failure,
15 unless there is an extensive destruction of tissue
16 you might not see microscopic changes.

17 Q. I take it then, Doctor, in
18 respect of chronic renal failure there were no
19 findings which presented at autopsy which suggested
20 that condition to you?

21 A. That is correct, yes.

22 Q. All right. But that you have
23 just told us does not rule out the possibility that
24 the child experienced acute renal failure, thus not
25 preventing sufficient time for pathological indicia
or findings to set in?



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A. That is correct, yes.

3

Q. All right. Is there anything

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further, Doctor, that can be done at autopsy

5

separate and apart from microscopic examination to

6

determine whether or not a patient has suffered

7

from acute renal failure?

8

A. I suppose one could do some

9

postmortem biochemistry which depends on results.

10

You might be able to see whether there was a renal

11

failure. A more reliable test would be the pre-mortem
biochemical tests which would indicate the presence

12

of renal failure. But you may try to correlate

13

these. You would have a set of pre-mortem and a

14

set of postmortem biochemistry.

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Q. Was that done in this case,

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Doctor?

17

A. No, it has not been done.

18

Q. All right. I take it then,

19

Doctor, on the basis of the evidence which presented
itself at autopsy to you, it was your opinion and

20

you reached the conclusion that death was attributable

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in this case to digoxin toxicity?

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A. Yes, this is in view of the

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level we received which obviously is far beyond what

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we have seen before and there is no other conclusion

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to make. In case if there was no digoxin reading then the death would be due to natural causes.

Q. Doctor, when you learned of the level of 78 nanograms on Allana Miller, did you address your mind as to how a concentration of digoxin at that level might have occurred in this child?

A. Well, the evidence or the knowledge that we had at the time and almost no literature dealing with this issue it could not be explained in terms of having any relationship to the disease or anything to do with the patient's condition. It raises an issue of, you know, how this can occur and even at that time, I would have been thinking about some errors or some defects in the technique or things like that, subject to further studies.

Q. I know you have told me, Doctor, that you can't recall specifically when you learned of this level and you are content in your own mind as I understand it you didn't learn of it on Saturday, March 21st. Do I have that correctly?

A. No, I did not know about the level on the Saturday.

Q. To the best of your recollection, perhaps this can assist you, do you recall whether



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or not you knew about the digoxin level in Allana Miller before the Metropolitan Toronto Police commenced their investigation at the Hospital?

A. I believe I learned first of the level on the Monday following.

Q. The 23rd of March?

A. The 23rd of March, yes.

Q. Doctor, when you did learn of the level you have told us that it couldn't be explained in light of the child's condition and the disease that she was found to have. Did it occur to you at that time, that it could be the result of something sinister with respect to the administration of digoxin?

A. Well, it is really not for me to say if it was sinister or not. It was something which was unexplained and in the Hospital setting, I don't know, at that time we were not thinking of anything sinister unless there was some further evidence for it.

Q. I take it though, Doctor, then if you learned of this level on the 23rd of March, the Monday after the Metropolitan Toronto Police began their investigation, you learned of it at a time when there had been a number of deaths and a number of



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steps taken to investigate those deaths over that weekend?

A. Yes.

Q. All right. And you learned of that level in the context of knowing what the Pacsai level was and what the Estrella level was?

A. Yes.

Q. All right. Doctor, may we turn then to the case of Justin Cook.

Once again, Doctor, did you supervise the performance of this autopsy?

A. Yes, I did.

Q. And who actually performed the autopsy?

A. No, I was present. This again was done by Dr. Taylor who was with me on that weekend.

Q. All right. And as I understand it, Doctor, the child died Sunday, March 22nd and the autopsy again was conducted on the same day?

A. Yes, that's what it shows, yes.

Q. Was this a parental consent autopsy insofar as you were aware, Doctor?

A. Yes, it was a parental consent autopsy with a limitation that it was restricted to heart and lung only.



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Q. All right. Were you present for the gross autopsy of Justin Cook?

A. Yes, I was.

Q. Did you personally have an opportunity to review the medical record of the child before the autopsy was undertaken?

A. Yes, I did, yes.

Q. All right. Did you know on the basis of your review of the medical record, Doctor, that Justin Cook had not been receiving digoxin at the Hospital?

A. Yes, that's what - I couldn't find any reference to digoxin being administered.

Q. Were you aware, Doctor, prior to overseeing the conduct of the gross autopsy that an antemortem digoxin sample had been taken and a level obtained with respect to Justin Cook, or a level requested with respect to Justin Cook?

A. Well, the events occurred in such a way that I had been notified about 7:45 on Sunday morning by Dr. Fowler telling me that there had been another patient die and the reason he is phoning me is to tell me that they wanted to make sure that we take samples of blood for measurements of digoxin. He also told me that they are suspecting



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3 that this child might have high levels without having
4 received it, or having ordered digoxin. I questioned
5 him as to whether the coroner's office has been
6 notified and he said yes, and he told me, you
7 know, there is a parental consent.

8 Q. All right. You received that
9 phone call I think you said, Doctor, on the Sunday
10 morning?

11 A. Yes.

12 Q. That would be March 22nd at,
13 I believe you said 7:45 a.m.?

14 A. Yes, approximately.

15 Q. Did Dr. Fowler specifically
16 tell you at that time that Justin Cook had not been
17 receiving digoxin in the Hospital?

18 A. I believe he might have said
19 that at that time but, you know, I definitely
20 learned about it later during the day.

21 Q. Did that conversation with
22 Dr. Fowler occur before you had seen the medical
23 record on the patient?

24 A. Yes.

25 Q. All right. Did Dr. Fowler
indicate to you during the course of the discussion
that a sample for digoxin assay had been taken



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ante mortem?

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A. I don't believe he told me that prior to the autopsy but he came later on during the day, which I believe we started the autopsy about 10 o'clock and he came about 10:30 and called me out to the corridor and he told me that they have taken or that he received information that the high level of digoxin was found in the sample of this infant, the sample which was taken immediately after death, or just prior to death, I'm not certain of that, and that the police had been called in to investigate.

Q. Did he tell you what the level in fact was?

A. I can't recall whether he mentioned a number, but he said it was very high.

Q. Other than - well, may I ask you this first, Doctor. During the course of your discussion with Dr. Fowler, other than the discussion that you have just described to us, did you have any discussion with him at that time concerning the clinical history or the clinical problems of Justin Cook?

A. I think he might, you know, I'm sure he mentioned that the child was not supposed to have received digoxin or, in other words, he was



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not prescribed digoxin.

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Q. All right. Other than that,
do you recall any discussion concerning the child's
medical condition?

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A. I don't recall discussing that
in any great detail, no.

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Q. All right. Doctor, were you
in the Hospital when you received this telephone
call from Dr. Fowler or were you at home?

9

10

A. No, this was at home.

11

12

Q. All right. Were you being
called in for the purposes of the autopsy?

13

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A. Well, normally if it was a
Hospital case then it usually would be Dr. - or
the resident, in this case, Dr. Taylor who would
notify me that there is a case to be done and then
I would come in.

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16

17

Q. Yes.

18

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A. And, you know, sometimes if
there is some special request or other reason, a
clinician may call me directly.

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Q. And in this case that happened?

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A. This was what happened, yes.

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Q. All right. Other than the
discussion that you had with Dr. Fowler, did you

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discuss the case with any other member of the
Cardiology Division before the gross autopsy was
undertaken?

A. No, I had not.

Q. All right. Doctor, on the
basis of your own medical review of the chart and
the information that was provided to you before the
gross autopsy, were there any factors which you
were then considering as possibly having contributed
to the death of the child before commencing the gross
autopsy?

A. Yes. Well, there were numbers
of clinical findings, diagnoses. The child obviously
had signs of congenital heart disease which have
been diagnosed. The child, in addition, I think
presented to the Hospital because of cyanosis or
turning blue, as well as having some difficulty
feeding, vomiting and diarrhea. I believe the child
was referred from Kitchener.

Q. All right. Other than the
congenital heart disease and the symptoms which
the child had exhibited on admission to the Hospital,
was there anything else that you considered of
significance based on your review of the medical
record?



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3 A. The child I think in the
4 Hospital suffered apneic spells, which means it
5 stopped breathing for a while and was brought back
6 or resuscitated using drugs with some initial improve-
7 ment and the baby seemed to have what is described
8 as having settled and then the same symptoms had
9 occurred later and the same drug was used again and
10 in this case propranolol. But with the drug being
11 given for about three times the child seemed to
12 show or was showing bradycardia, was showing cooling
13 of the extremities, or the extremities were cold
14 and then this perhaps was interpreted as an overdose
15 of propranolol which was counteracted giving
16 atropine; atropine and morphine I believe.

15 Q. So, was there anything then,
16 Doctor, in addition to the apneic spells that you have
17 just described and the other factors that you had
18 in your mind as you commenced that gross autopsy
19 as possibly contributing to the child's death?

19 A. Well, obviously we had numbers
20 of the symptoms from which one can die, especially
21 apnea.

22 Q. Well, other than that, Doctor?

23 A. There was no other specific
24 cause I could look for.
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Q. All right. On the basis of the gross autopsy that was then performed, Doctor, were you able to formulate an opinion on the basis of what was observable to you at gross autopsy as to the cause of this child's death?

A. Well, as I mentioned before, we had a restricted autopsy which more or less limits us to defining the defect in the heart and perhaps examining the lungs. So that we could not exclude lesions elsewhere. For instance, in the brain the child had apnea, so, he might have had some lesions in the brain. We could not look at kidneys or any of the other organs. So that basically this autopsy only tells you what findings there were in the heart and the findings there were confirmatory as to the clinical diagnosis of the child having a congenital heart disease.

Q. The results I gather at autopsy also dealt with the lungs?

A. Yes.

Q. In addition to the heart?

A. Yes.

Q. All right. At gross autopsy was there anything observable with respect to the lungs that suggested itself to you as the cause of



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the child's death?

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A. The lungs showed congestion and edema which would be an indication or associated with heart failure but it didn't show pneumonia or infection. I believe there was some minor finding which would indicate that perhaps just prior to death the baby might have aspirated.

MS. CRONK: Mr. Commissioner, I am about to move into the area of blood samples. Would this be an appropriate time?

THE COMMISSIONER: Yes. I take it that we just continue as best we can with Dr. Cutz this afternoon and then you have Dr. Costigan tomorrow, is that it?

MS. CRONK: Yes.

MR. SCOTT: Mr. Commissioner, I'm going to ask if you wouldn't permit this liberty of allowing me to conduct my examination of Dr. Cutz next week. The reason for that is we thought he wasn't going to be called this week and we prepared the doctors who were. We were asked to provide him last night for this morning because Dr. Taylor didn't take as long and we have been able to do that. But frankly I am handicapped.

THE COMMISSIONER: I wonder if I could



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ask you to do the best you can because there may be some difficulty with the other counsel coming after you knowing that you bracket them both before and after.

MR. SCOTT: Well, I will do the best I can.

THE COMMISSIONER: Do the best you can and if you are in trouble of course you have an opportunity to come back but we will run into another one of those sessions where everybody will be standing up all over the place.

MR. SCOTT: Well, what I wanted to do, and perhaps I can just remind Dr. Cutz now is, I wanted to take him through Dr. Rowe's 14 mechanical methods of dying and if he has had a chance to do that.

THE COMMISSIONER: Well, this Commission does not prevent you from having lunch with him.

MR. SCOTT: No.

THE COMMISSIONER: And preparing him and yourself.

MR. SCOTT: I understand.

THE COMMISSIONER: As well as you can. But if you don't make an effort we may find ourselves



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doing nothing but worrying about what Mr. Sopinka
has in store for us at 4:30.

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MR. SCOTT: Well, I must say, having
made these arrangements with Ms. Cronk, we unmade
them yesterday to suit the convenience of the
Commissioner but it has created that problem for me.

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THE COMMISSIONER: Well, will you do
the best you can?

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MR. SCOTT: Well, you can hardly
say no to that question.

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THE COMMISSIONER: So we will get
as much done as we can. All right, until 2:30.
---Luncheon recess.



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--- on resuming.

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MS. CRONK: Q. Dr. Cutz, before

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the lunch break, we were discussing the case of

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Justin Cook.

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A. Yes.

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Q. As I understand it, a

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number of blood samples were drawn after the death
of the child for the purpose of digoxin assays.

9

Can you help me, doctor, as to

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who drew the blood samples from the body of Justin

11

Cook during the autopsy?

12

A. It was Dr. Taylor.

13

Q. Were you there when he

14

took the samples?

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A. Yes, I was.

16

Q. And can you help us as

17

to what site of the body was used for the purpose
of drawing the sample?

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A. It was the same site

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as I mentioned previously, which is the inferior
vena cava.

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Q. And you physically

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observed Dr. Taylor when he drew that sample?

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A. Yes, I did.

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Q. Can you tell me, were any

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AA2 2 precautions taken by way of sterilization of the
3 site before the sample was taken?

4 A. Yes. It would be the
5 same way as the previous samples.

6 Q. Was it intended, doctor,
7 that this sample would be used for culture purposes
8 as well?

9 A. I believe they might have
10 been sent for culture.

11 Q. Bearing in mind, doctor,
12 that this was a limited consent autopsy --

13 A. Yes. Perhaps we did not
14 sent it for culture, so it might not have been
15 sterilized.

16 Q. Doctor, I take it -- per-
17 haps you can tell me, do you have a specific
18 recollection today as to whether or not the site
19 was sterilized before the sample was taken?

20 A. If we were not to take
21 a culture, then probably there would be no need to
22 sterilize it.

23 Q. Do you recall one way or
24 the other whether or not this was done?

25 A. I cannot be certain.

Q. I take it that if it were



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done, doctor, the instrument that would be used to sterilize the site is the one we have discussed previously, and that is a heated instrument applied to the direct surface from which the sample would then be drawn?

A. Yes, that is correct.

Q. Doctor, do you have the medical record there of Justin Cook?

A. Yes.

Q. Exhibit 116.

A. Yes.

Q. Would you turn with me, if you would, to page 57 of the medical record.

A. Yes.

Q. Do you have that, doctor?

A. Yes.

Q. Doctor, this is a computer printout from the Biochemistry Laboratory of the Hospital entitled "Clinical Chemistry Interim Report", and you will see by glancing at the report that there are a number of assay results with respect to digoxin reported on this page.

I draw your attention first to the sample which is indicated to be D57978. That is the second column over. Do you see that, doctor?



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A. Yes, I do.

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Q. That sample appears, from

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this record, to have been drawn on the 22nd of March

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1981, although no time is indicated for the date

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of drawing of the sample.

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Do you see that?

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A. Yes.

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Q. That sample resulted in

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a level of greater than 100 nanograms.

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A. Yes, that is correct.

12

MS. CRONK: Mr. Registrar, could
you show Dr. Cutz as well Exhibit 32A.

13

Thank you.

14

Q. Doctor, if you could keep

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the two open, I know that is a little difficult in

16

that tiny space, but if you could turn to Tab 10,
if you would, of Exhibit 32A.

17

Do you have that, doctor?

18

A. Yes, I do.

19

Q. Doctor, that appears to

20

be a Clinical Chemistry Requisition Form in respect

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again of Sample D57978 and there appears to be the

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signature of Dr. Taylor on the bottom right-hand

23

side of the page.

24

A. Yes.

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Q. Do you recognize that signature as Dr. Taylor's?

A. Yes, I do.

Q. Were you present, Dr. Cutz, when any requisition forms were completed with respect to samples drawn at autopsy for Justin Cook?

A. Yes, I was.

Q. Do you recall Dr. Taylor completing a requisition form?

A. I would assume he did complete it, yes.

Q. And, doctor, if we examine the sample number on this requisition form, that appears to be, I take it you would agree with me, the same sample number to which I have drawn your attention on page 57 of the medical record?

A. Yes.

Q. I direct your attention to the bottom left-hand side of the requisition form and there is an indication that it is for digoxin and then, in round brackets, the word "blood" appears.

A. Yes.

Q. Would you agree with me,



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doctor, that that sample would appear to be the blood sample drawn by Dr. Taylor at autopsy and that that resulted in a level of greater than 100 nano-grams?

A. Yes, that is correct.

Q. Would you tell me, doctor, when you first learned that that was the level that had been recorded in respect to the sample that Dr. Taylor had drawn?

A. The report I received --

THE COMMISSIONER: Sorry. There is no question -- I know we have been through this before, but there is no question that that was Dr. Taylor's sample? It is there. I know it is the same number and it is his requisition. What worries me is that "Ward 4A".

MS. CRONK: On the top right-hand corner?

THE COMMISSIONER: On the top right-hand corner.

MS. CRONK: It had been my understanding, sir, that there were a number of blood samples drawn post mortem with respect to Justin Cook and that is what I intend to deal with with the doctor. My understanding is that this one was the



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one that was drawn by Dr. Taylor, as is borne out
by the correspondence of the sample number.

THE COMMISSIONER: Yes. All right.

THE WITNESS: My report, the one
I received, is dated March 28.

MS. CRONK: Q. Are you referring
now, doctor, to a biochemical printout form in the
fashion that we see on page 57?

A. Yes.

Q. And does that form reveal
a level of greater than 100 nanograms?

A. Yes, that is correct.

Q. For the same sample number?

A. Can you -- I sort of
closed the page.

Q. Doctor, the printout that
you have shown me bears the same -- There are two
different sample numbers but there does not appear
to be a level reported on that form; is that correct?

A. Yes.

Q. Do you recall then, doctor,
receiving from the Biochemistry Department another
biochemistry printout form disclosing the result of
greater than 100 nanograms?

A. This is the only one I had



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in my possession.

Q. Other than the computer printout itself, I take it that, at some point, you were informed as to the result that had been reached on the sample drawn by Dr. Taylor?

A. Yes. I believe it was Monday or Tuesday the following week, yes.

Q. That would be March 24th or March 25th?

A. I might have been verbally told that --

Q. Sorry, it would be March 23rd, the Monday, or March 24th, the Tuesday.

A. Yes.

Q. Do you recall now, doctor, who told you the result of the assay?

A. I cannot really recall, no.

Q. Do you recall where you were when you learned of the result?

A. The first indication that there was a high level was, as I mentioned, Dr. Fowler coming to the autopsy room and telling me that there was a pre mortem sample from the patient which was very high. I cannot recall whether he mentioned the number.



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Q. Yes.

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A. So, at that point, this

4

is before we completed the autopsy, I already knew
there was a high level.

5

6

Then, I did not hear anything
about this autopsy or anything surrounding it
until Monday morning.

7

8

Q. Were you told at that

9

time by Dr. Fowler, or by anyone from the Cardiology
Division, as to what the level had been on the post
mortem sample, or do you recall?

10

11

A. I don't recall who actually
told me but I was aware that both samples were very
high.

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Q. Doctor, by the time that
you were informed as to the result of the Cook assay,
had you, by that time, been informed as to the
post mortem results on Allana Miller?

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17

A. I cannot really recall.

18

19

The Monday, which is the 23rd, early in the morning,
just when I came to work, I was notified by one of
the Administrators that there was a meeting going to
be held in one of the conference rooms of the
Administration regarding the Infant Cook.

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23

Q. Yes.

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AA102 A. At that meeting were the
3 various people from the Hospital, the clinical
4 departments, Dr. Bennet, the Deputy Chief Coroner,
5 the representatives of the police were present.
6 This is where these various patients had been
7 discussed.

8 Q . Is that when you learned
9 of those two levels; the level on Allana Miller and
10 the level on Justin Cook of greater than 100 nanograms?

11 A. Presumably that is where
12 I learned about it but I am not having it very clear
13 whether it was that day or the day after.

14 Q. Doctor, can you help me
15 as to what time of day the Justin Cook autopsy was
16 performed?

17 A. I think we started about
18 ten o'clock in the morning.

19 Q. And how long did it take
20 to complete the autopsy, doctor?

21 A. That would not be very
22 long; maybe about an hour.

23 Q. Was the sample drawn,
24 and I take it it was not very long because it was
25 a limited autopsy --

A. That is right.

Q. -- was the sample drawn



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by Dr. Taylor, the blood specimen for digoxin assay drawn, as you told us was the case with Allana Miller, at the beginning of the autopsy, after the body had been cut open?

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A. Yes.

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Q. So, I take it then, if the

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autopsy itself took an hour, the sample would have been drawn sometime shortly after ten o'clock,

8

9

after the autopsy had been commenced?

10

A. Yes.

11

Q. That would have been on

the morning of the 22nd?

12

A. Yes.

13

Q. Doctor, as I understand

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it, there was another blood sample taken for post mortem digoxin assay on Justin Cook and I direct your attention again to page 57 of the medical record.

15

16

17

Do you have that?

18

A. Yes.

19

Q. I would ask you to look

20

at the fourth column over, doctor, where Sample No. J05490 is dealt with, and the indication is that that sample was drawn on March 22, 1981 at 6:00 a.m.

21

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Do you see that?

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A. Yes, I do.

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Q. That sample resulted in a level of 68 nanograms?

A. Yes.

Q. There is a footnote, Doctor, below that level that says "see H" and if we go to the bottom at that page we see an indication that the sample had been assayed on dilution. Do you see that?

A. Yes, I do.

Q. Doctor, would you turn with me now to Tab 37 of Exhibit 32A, the other volume of documents before you. Do you have that document?

A. Yes.

Q. Doctor, that appears to be a second clinical chemistry requisition form and once again the sample number on this form is J05490. That corresponds with the sample number that we have just looked at as having been drawn at 6:00 a.m. on March 22nd.

A. Yes.

Q. You see as well the indication at the top of the requisition form that the sample was postmortem blood, written in by hand, at the top of the requisition form.

A. I cannot see that.

Q. Do you see that, Doctor?



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A. Yes, I do.

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Q. As well, Doctor, if we look to the bottom right-hand side of the requisition form it appears to be the signature of Dr. Mountstephen.

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A. Yes.

7

8

Q. Do you see that?

A. Yes, I presume so.

10

11

12

Q. Dr. Mountstephen was connected with the Cardiology Division, as I understand it. Is that correct?

A. I do not know him, so I would not know.

13

14

Q. Is he connected with the Pathology Department?

A. No, he is not.

15

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Q. To the best of your knowledge, Doctor, at the time that you were conducting the autopsy on Justin Cook, were you aware that another postmortem sample had been drawn on the ward?

19

20

A. Not until when Dr. Fowler came to talk to me, which was about 10:30 in the morning.

21

22

Q. I would like to be clear about this, Doctor. You have told us that Dr. Fowler came to see you when the gross autopsy was in progress?

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A. Yes.



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Q. And he told you at that time that a level was very high on a sample that was drawn premortem. Is that correct?

A. Well, premortem - or I'm not sure whether he said just immediately after death which would be called a postmortem.

Q. And, Doctor, if we look at page 57 of the medical record in the columns of the samples --

A. Yes.

Q. If you look at the third column it appears that a sample was drawn on the 22nd of March, 1981 at 4:30 a.m. and that sample bears a different sample number than the ones that we have been looking at so far and it resulted in a level of 72 nanograms. Do you see that?

A. Yes.

Q. And then the one to which I drew your attention was a sample drawn at 6:00 a.m., after the child had died, which resulted in a level of 68 nanograms.

A. Yes.

Q. What I am suggesting to you, Doctor, is that the 68 nanograms level relates to a sample that was drawn clearly after the child had died at 6:00 a.m.



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A. Yes.

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Q. It as well is a postmortem level and it would appear, by virtue of the requisition form to which I have drawn your attention, that it was ordered on the ward by Dr. Mountstephen.

A. Yes.

Q. My question to you Doctor is, were you aware at the time of conducting the autopsy that a second postmortem sample had been drawn?

A. No, I did not know anything about it.

Q. Were you subsequently informed, Doctor, that another postmortem level of 68 nanograms had been obtained on a sample drawn from Justin Cook?

A. No, I was not told specifically what samples --

Q. At the time that you were preparing, and we will come to the report itself in a moment, but at the time that you were preparing the final autopsy report I take it clearly you knew at that stage that the sample drawn by Dr. Taylor had resulted in a level of greater than 100 nanograms?

A. That is correct.

Q. That is the sample drawn in your own lab while the autopsy was in progress?



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A. Yes.

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Q. Did you at that point have any knowledge that a second postmortem sample had been drawn, assayed, and resulted in a level of 68 nanograms?

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A. No, I did not know what these levels were. I knew they were well above - or at least I was not told a number but I was told that they were in the neighbourhood -- high -- close to 100. That is one aspect.

The other aspect is that at that time all the clinical charts and documents had been seized so that I had no access to any of these documents even if I wanted to check it, so that the last time I seen the chart was when we did the autopsy and this would have gone to the chart.

Q. I take it, Doctor, that the final autopsy report on Justin Cook was prepared then after you knew of the greater than 100 nanogram level?

A. That is right. This was the only actual sort of report which I had at my disposal, yes.

Q. That was the only number of which you were aware?

A. Yes.

Q. Then, Doctor, it is my



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understanding that the sample drawn by Dr. Taylor, the blood sample, was used first for the purposes of being sent to the hospital laboratory in order that a digoxin assay could be done there?

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A. That is correct.

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Q. Was that sample also used for a different purpose, for a digoxin assay elsewhere than at the Hospital for Sick Children?

A. Yes, it was. When I realized the seriousness of the situation after Dr. Fowler told me there is a high level in a baby who is not supposed to receive digoxin I wanted to make sure that if something arises from this that the continuity of evidence is maintained.

So I took similar samples, they would be from the same syringe, into receptacles which are provided by the Centre of Forensic Sciences.

Q. I am sorry, receptacle?

A. Well, test tube, and I submitted those with blood samples plus some tissue samples which I personally delivered to the Centre of Forensic Sciences for further testing.

Q. Did you do that on the same day, on the 22nd of March?

A. That is correct.



1
2 Q. Can we deal first with the blood
3 sample that you delivered to the Centre of Forensic
4 Sciences?

5 A. Yes.

6 Q. Was that a different sample from
7 the one that Dr. Taylor had drawn or was it merely part
8 of the blood sample that he had drawn?

9 A. I believe it was a part of the
10 same sample.

11 Q. And you mentioned a moment ago
12 that it would be from the same syringe, and I think I
13 forgot to ask you this, was that the method that
14 Dr. Taylor used to draw the same from the inferior
15 vena cava?

16 A. That is correct.

17 Q. A syringe accompanied by a
18 needle, for that purpose?

19 A. That is correct.

20 Q. So I take it then, Doctor, that
21 on the basis of the documents that we have looked at,
22 there is the sample drawn by Dr. Taylor, part of which
23 was sent to the biochemistry laboratory and resulted in
24 a level of greater than 100 nanograms; part of the
25 sample was delivered by you personally to the Centre of
Forensic Sciences for assay?



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A. Yes, that is correct.

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Q. As well there would appear to be a sample drawn after the child's death by Dr. Mountstephen which resulted in a level of greater than 68 nanograms?

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A. Yes.

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Q. Now, Doctor, dealing not now with blood samples but with tissue samples, were tissue samples taken either by Dr. Taylor or yourself during the autopsy at the hospital for the purposes of digoxin assay?

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A. Yes. We took samples. I cannot recall whether it was Dr. Taylor or whether it was myself who actually took the samples, but I was there. We took a sample of the myocardium, which was divided, with one part going to our biochemistry lab and the other one for the Forensic Sciences; and for the Forensic Sciences, in addition, I included a piece of lung and this was, having in view the limitation of the autopsy, to provide as many tissue samples as we could.

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Q. Then, dealing, Doctor, with the myocardium sample --

A. Yes.

Q. -- how was that physically taken



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at autopsy? How was that obtained?

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A. A small piece would be cut from the myocardium and deposited into a bottle.

5

6

Q. And that is the sample that was then divided into two?

7

A. It would be divided first and then put into separate bottles.

8

9

Q. And both samples came from the same site?

10

A. That is correct.

11

12

Q. Doctor, could you turn with me to page 59 of the medical record, if you will.

13

A. Yes.

14

Q. Do you have that?

15

A. Yes.

16

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Q. This again appears to be a computer printout from the Biochemistry Department, a cumulative report, and it refers this time to a sample drawn on the 22nd of March, 1981, although no time is indicated, and it refers to specimen number D57980. Do you see that, Doctor?

20

21

A. Yes, I do.

22

23

Q. There is also an indication with respect to that sample of "not applicable", there was no reading available.

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A. Yes.

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Q. And there is a footnote under

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that, Doctor, that says "see A" and if we go to the

5

bottom of the page we see the note "Specimen is heart
muscle. Test not available".

6

Do you see that?

7

A. Yes, I see that.

8

Q. Doctor, could you turn with me

9

now in the same volume of documents, the one beside

10

you, 32A, to Tab 40 if you would please. Do you see

11

that Doctor, Tab 40?

12

A. Yes.

13

Q. This again appears to be a

14

clinical chemistry requisition form bearing the same
sample number as the one that we just looked at,

15

D57980, and it appears again to bear the signature of

16

Dr. Taylor. Do you recognize that as his signature?

17

A. Yes.

18

Q. On the bottom left-hand side of

19

the page we see the notation "heart muscle digoxin"?

20

A. Yes, that is right.

21

Q. Would you agree with me, Doctor,

22

that that requisition form appears to relate to the
sample from the heart muscle that was sent by Dr.

23

Taylor to the biochemistry laboratory at the hospital?

24

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However, there was not a test available and no level
could in fact be recorded on that sample?

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A. Yes, that is my understanding,
yes.

5

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Q. Doctor, then, in respect to the
myocardium sample that you took for the purposes of
forwarding it to the Centre of Forensic Sciences, how
was that delivered to the Centre? Did you personally
do that as well?

7

8

9

10

A. Yes, I personally delivered the
sample.

11

12

Q. When you said it was a myocardium
sample were you referring again to heart muscle?

13

14

A. That is correct.

15

16

Q. And similarly, Doctor, how did
the lung tissue specimen which you took get delivered
to the Centre of Forensic Sciences?

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A. The same way.

18

Q. You did it, personally?

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A. Yes.

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Q. Doctor, to the best of your knowledge was there a lung tissue specimen sent over by Dr. Taylor or yourself to the laboratory at the Hospital for the purposes of assay, as opposed to the heart muscle specimen?

A. I can't say for sure, but I don't think we sent any lung tissue to the biochemistry lab.

Q. Doctor, after the conduct of the autopsy itself, did anyone from the Biochemistry Department at the Hosiptal approach you, or to your knowledge, Dr. Taylor, to enquire whether or not any other tissue specimens were available for the biochemistry lab, so that further tests could be run?

A. No, I have no recollection of that.

Q. Doctor, were you subsequently informed that digoxin assays in fact were attempted at the Hospital with tissue samples other than from myocardium samples from the body of Justin Cook, were you aware of that?

A. I wasn't aware of it at the time.

Q. When did you become aware of that?



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A. I became aware of it later on,
I believe it is almost a year later.

Q. Did you at that time become
aware as to what the results of those assays were?

A. Yes, I learned about what
the results were, yes.

Q. Do you know what the levels
were that were obtained?

A. They were, I can't remember
the exact numbers, but several hundred to a thousand
level.

Q. I am sorry, Doctor?

A. Several hundred to a thousand
or two thousand levels from what I recollect.

Q. Do you know who conducted those
assays, Doctor?

A. I believe that was done in the
Forensic Sciences laboratory.

Q. So that there is no confusion,
Doctor, I would like to direct your attention to the
test done purely at the Hospital.

A. Yes.

Q. My question to you was, other
than the heart muscle specimen that was sent by
Dr. Taylor to the Hospital laboratory, in respect of



1
2 which no result was available, did you subsequently
3 become aware of any other digoxin assays run at the
4 Hospital on tissue specimens from Justin Cook?

5 A. I was not aware, but what I
6 noticed at the meeting on the Monday, with Dr. Bennett
7 and others being there, I recall Dr. Bennett suggested
8 that a second autopsy should be performed, and samples
9 of stomach contents and intestinal contents obtained,
10 so that I presume was done in Owen Sound, that is
11 where the baby was sent back. I have no knowledge
12 as to what happened to those samples.

13 Q. Thank you, Doctor. I take it
14 then you have no personal knowledge as to any other
15 tissue samples which may have been tested for digoxin
16 assay purposes at the Hospital, other than the
17 heart muscle specimens?

18 A. No, I have no knowledge of
19 other samples.

20 Q. Thank you, Doctor. Doctor,
21 prior to the case of Kevin Pacsai, because you will
22 recall when you were here last you told us that on
23 March 18th, Dr. Ellis came to your laboratory and
24 requested, or at least enquired of you whether or
25 not there were any tissue specimens available for
assay. Other than that case, and the case of Justin



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2
3 Cook, are you aware of any other situation in the
4 Hospital where tissue specimens were tested for
5 digoxin assay during the period of time with which
6 we are here interested?

7 A. No, I'm not aware that any
8 tissue was tested.

9 Q. Thank you, Doctor. Doctor,
10 I take it that you have told us about the results of
11 the gross autopsy in the case of Justin Cook. I
12 take it there were some microscopic studies conducted
13 with respect to this child?

14 A. Yes, they were.

15 Q. And were they restricted to
16 an examination of the lungs and the heart?

17 A. Yes, they were.

18 Q. Apart from the microscopic
19 examination of specimens from the lungs and the heart,
20 Doctor, were any studies done for electrolytes and
21 matters of that kind?

22 A. No, they would not be because
23 of the restrictions.

24 Q. The restriction being that the
25 autopsy was limited to the heart and the lungs?

A. Yes.

Q. I am sorry, the heart and the
lungs?



BB5

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A. Yes.

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Q. Doctor, would you turn with me

4

if you would to page 44 of the medical record again,

5

that is the final autopsy report for Justin Cook?

6

A. Yes.

7

Q. Do you have that, Doctor?

8

A. Yes.

9

Q. Can you help me first, Doctor,

10

as to when this report was prepared? We know the

11

autopsy was performed on the 22nd of March, when did

you do this report?

12

A. The report mostly likely, or

13

most certainly would have been prepared on the 24th,

14

or between the 24th and 25th of March.

15

Q. Why do you say it was almost

16

certain it was prepared then?

17

A. Because this was one of the

18

cases under investigation and we were asked to

19

provide autopsy reports. Since in this case we only

20

had two tissues to deal with and there was - it

21

would be relatively easy to have them processed in

the shortest time.

22

Q. Doctor, I am sorry, was there

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something you wished to add?

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A. No, there wouldn't be any

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special reason to delay any further because we had the digoxin level and we had the sections taken and it was limited to these two tissues, there was really not much to examine.

Q. I understand, Doctor. Doctor, I take it then that once again the findings which were made by you as a result of the autopsy are summarized under the "Anatomical Diagnoses" section of the first page of the report?

A. Yes, they are.

Q. And once again your predominant finding was of digoxin toxicity based on the post-mortem serum digoxin level of greater than 100 nanograms?

A. Yes, that is correct.

Q. And secondly, Doctor, the report sets out the confirmation that I take it was available at autopsy that the child had congenital heart disease?

A. Yes, that is correct.

Q. With a number of complicating features which are also set out?

A. Yes, they are.

Q. And thirdly, there is mention made of pulmonary congestion and edema, which you



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describe as being mild to moderate.

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A. Yes, that is correct.

4

Q. I take it then, Doctor, that

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the congestion and the edema in your view of and

6

in themselves would be insufficient to account for

7

the child's death?

8

A. Well, that would only be an

9

indication of the ongoing heart failure and not

10

having done the full autopsy we could not rule out

11

many other things. So in view of the restriction

12

there was no apparent cause either in the heart or

13

the lungs which would explain or give us an

anatomical cause.

14

Q. And Doctor, once again at

15

page 2 of the final autopsy report, the conclusion

16

is drawn and recorded that digoxin toxicity is the

17

immediate cause of death. I take it that was your

18

opinion at the time the final autopsy report was

prepared for your signature?

19

A. That is correct.

20

Q. And Doctor, immediately

21

preceding that final statement on page 2 is an

22

indication that the level of digoxin of greater than

23

100 nanograms was well above the toxic range and

24

could account for cardiac dysrhythmia, bradycardia

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BB7



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3 and cardiac arrest. Did you at that time, Doctor,
4 have any understanding as to what the toxic range
5 of digoxin was in an infant of this weight?

6 A. Yes, I think a limit above
7 100 would be definitely well above such a range
8 as far as was known at the time.

9 Q. What was your understanding
10 as to what the toxic range was, if you had such an
11 understanding at the time?

12 A. I think that came up before
13 while I was sitting here as far as what the definition
14 was --

15 Q. It may have.

16 A. As far as what the definition
17 of toxic is. In a therapeutic sense I would
18 rather call it an adverse reaction.

19 Q. All right.

20 A. Where this normally occurs,
21 and one has to basically taper the drug to the
22 individual person's tolerance of the drug, so that
23 the levels and the effects, of adverse effects and
24 toxicity would be different in different individuals.
25 Generally speaking I think it varies anywhere from
2 to 10 nanograms per ml, that is what we consider
is - patients with those kinds of levels might show



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signs of toxicity or adverse effects.

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A. That is correct. This was assuming that the test is correct and it is a true level.

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Q. Was there, Doctor, any information available to you at the time when you learned of this level to suggest that the assay was incorrect and there was something wrong in the procedure itself?

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A. No, I was assured that it was correct.

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Q. Was there any information available to you or suggestion made that there had been any kind of a decimal error, or a calculation error in arriving at that level?

A. Well, those seem to have been ruled out from things, the events, and things which happened subsequently. Because we were told that there was a suspect and it looked as though that the

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fears or whatever people might have about it, what was going on, was confirmed.

Q. Apart from those events, Doctor, was there any information available to you which lead you to conclude that there had been any error with respect to the calculation of that level of greater than 100?

A. I think this would have been a third or fourth instance where you, you know, it would be hard to accept these kinds of errors occurring, so that there must have been some other kind of explanation which again one can imagine the various situations which can occur.

Q. Doctor, once again I am obliged to ask you, once you learned of that level of greater than 100 nanograms.

A. Yes.

Q. Did you lend your mind, or address the issue in your mind as to how that level might be achieved in a child known not to have received digoxin?

A. Well, one could not really explain that. That would suggest that the reason was a medication error in other words, the wrong patient getting the wrong drug. Or perhaps some other



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scientific or other explanation we don't understand, realizing that the digoxin assay is not an absolute assay it is a radioimmunoassay, so that you could have substances which may react as digoxin and in fact may not be digoxin. So there is that possibility. Then I guess once you rule that out then you have to think of a possibility of an intentional overdose.

Q. Thank you, Doctor. Doctor, with respect to the suggestion that it might be a medication error, a patient getting a dosage of a drug intended for someone else; was there any information provided to you at any stage which suggested that Justin Cook received another patient's dose of digoxin in error?

A. No, there was no indication, but this does happen sometimes. It may or may not be recorded in the chart at the time we are reviewing it. So there might have been an incident which was recorded but which would not be in the chart at the time of the autopsy, for instance.

Q. Well, I take it, Doctor, that apart from the fact that it is possible for medication errors to occur, are there any facts of which you are personally aware to suggest that this might have happened in the case of Justin Cook?



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A. No, at the time I wasn't thinking at all of the possibilities, since one was in the hands of the police and the investigation, you know, we tried as best we could to help in the investigation and I have not advanced any theories, or anything as far as how to explain it and nobody asked me about it either.

Q. Until today perhaps. Doctor, I take it then you are not aware of any facts in that regard?

A. No, I am not.

Q. Thank you. Mr. Registrar, could you provide to the Doctor, if you would, a copy of Exhibit 197 and 198.

Doctor, I would ask you to look first at Exhibit 197, which is a list containing names of several children, the dates of death and then what appeared to be autopsy numbers. Have you seen this list, Doctor?

A. Yes, I have.

Q. What did you understand this list to be?

A. During the meeting on the 23rd, Monday the 23rd when the cases of the digoxin problem was discussed with the police and the coroner's



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office and other physicians of the Hospital, one of the discussion points was to decide as to how the investigation should proceed. One of the ideas was to review cases which died in the Hospital between January and March, on the same ward, which is the cardiac ward. My understanding there was that a list of cases will be provided to us to review the autopsy findings and provide : autopsy reports for the meeting which was to take place the next day.

Q. Was the use to which the list was to be put then, in your mind, a use which entailed examining the autopsy reports and making them available the next day for those who wish to see them?

A. That is correct.

Q. And I take it then that you understood that the names which appear on Exhibit 197 were the names of children who had died on the cardiac wards between the period beginning of January 1981 through to the date of the meeting, March 23rd?

A. Yes, that is correct.

Q. And Doctor, would you look now if you would at Exhibit 198, the second list.



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THE COMMISSIONER: I'm sorry, before we leave. Did you ever see the list, did you see it provided?

THE WITNESS: Yes, I saw it. What I can't remember as to where it came from, or who brought it but I saw it in the Department.

THE COMMISSIONER: I think we had some evidence that this one was just found in somebody's file, maybe that came from Mr. Scott, I don't know, but somebody told us that it was just produced in the file quite recently, but you saw it at the time, did you?

THE WITNESS: Yes, I saw it at the time, but the unusual thing in terms of whether this list might have been generated in our Department, I think it is almost impossible.

MR. SCOTT: Dr. Mancer gave evidence about where he thought it came from, and counsel for the Metro Police conceded that it was in police handwriting, so those are the two pieces of evidence we have so far. They are on the level of probability perhaps will show where it came from.

THE COMMISSIONER: Yes.

MR. YOUNG: Mr. Commissioner, you will recall actually Dr. Mancer said he found this



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list amongst a number of lists in Dr. Phillips' file.

THE COMMISSIONER: Yes, that was my recollection of it. I had forgotten you made the confession.

MR. YOUNG: I wouldn't phrase it that way, but it was indeed written by an officer with the Homicide Squad.

THE COMMISSIONER: Yes. Yes, all right. Thank you.

MS. CRONK: Q. Doctor, I take it then from your responses to the Commissioner that you did then subsequently see the list in the Pathology Department?

A. That is correct.

Q. Do you remember when that was?

A. I believe it must have been the Tuesday, which will be the 24th.

Q. Yes. Doctor, would you look now then at Exhibit 198, the second list?

A. Yes, I have it.

Q. Can you tell me, Doctor, did you assist in the preparation of this document?

A. Yes, I did.

Q. Who else was involved in its preparation other than yourself?



BB16

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A. Dr. Mancer.

3

Q. Anyone else?

4

A. I believe not.

5

Q. Doctor, can you identify for

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us the handwriting which appears below the categories

7

that are set out at the top, whose handwriting is that?

8

A. The handwriting on the top is

9

I believe Dr. Mancer's which is, I think is with a

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pencil, it was written with a pencil. The subsequent

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writing is my handwriting, but in fact what happened

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is that I wrote over the pencil writing with a felt

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pen so it would make the Xerox copies more visible,

14

and since the list basically is a summary list of

15

all the cases we have reviewed this was done at the

16

end of our review which we spent 24 hours to complete.

17

So this was a summary list and we were close to the

18

meeting, so we didn't have time to have it retyped,

19

or done anything, so I just go over the pencil writing,

20

the pencil written handwriting, some was Dr. Mancer's

21

and some was mine, so that it appears all of the

handwriting is mine but the original writing some of

it was by Dr. Mancer.

22

Q. Thank you, Doctor. Doctor,

23

you have as well in that answer anticipated my next

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question. That is what purpose insofar as you were

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BB17

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aware was the information set out in this document
to serve.

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A. Well, this was a summary
sheet of the findings in the cases under study, or
investigation, and we tried to provide a summary of
information; for example, date of death; the autopsy
number; the diagnosis, which we tried to put in the
most simple terms possible so that the layperson
can understand, or at least the death report. Then
we put a category of cause of death, and this
category was to indicate again the result of
our review from the point of view of pathology. If
there may be any cases where there is any grain of
suspicion that it may not be due to natural causes,
or in other words uncertain causes of death.

Q. Well, Doctor, if I can stop
you there first.

A. Yes.

Q. Amongst the names which appear
on this document are obviously a number of the names
of a number of children upon whom you performed
autopsies?

A. Yes.

Q. I am referring now to Kevin
Pacsai, Allan Miller and Justin Cook.



BB18

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A. Yes.

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Q. Dealing just with those three

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for the moment. Are the entries contained in both

5

columns beside their names entries that were made

6

by you?

7

A. Yes.

8

Q. And as well you have told us,

9

Doctor, that you were requested to sign the final

10

autopsy report in the case of Kristin Inwood, and

11

that you did so in Dr. Phillips' absence from the

12

Hospital. Are the entries beside Kristin Inwood's
name similarly yours?

13

A. It well may be, yes.

14

Q. Doctor, other than those

15

four children, do you recall now having made the

16

entries in respect of any of the other children whose
names appear on this list?

17

A. We divided with Dr. Mancer the

18

cases to be completed and obviously I did the cases

19

I was responsible for primarily, so I already had

20

three. I believe an additional case which I took

21

upon myself to complete was the case of Inwood. The

22

other cases would have been done by Dr. Mancer

23

which recognize one of his cases is Estrella, I

24

don't know about the other cases whether they were

25



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2

his originally or not.

3

Q. Doctor, may I direct your

4

attention to the case of Hines, Jordan Hines, his

5

name also appears on the list.

6

A. Yes.

7

Q. Do you recall having made the

8

entries which appear beside Jordan Hines' name, or

9

were those made by Dr. Mancer?

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A. Well, again, you know, I can't remember now since, you know, the writing was done in a hurry. I definitely would have put things which referred to my cases. Now, Hines was not my case and it could have been either me or Dr. Mancer who wrote the original writing. But the thing which I also recall is that we more or less discussed with Dr. Mancer the findings which were available at the time to come to some kind of a consensus as to whether there is an uncontestable cause of death or whether there is some slight possibility that you cannot pin it down. So, it was in that aspect that that has been filled out.

Q. All right.

A. So, it might have been the writing of either of us but maybe it was after consultation.

Q. All right. I take it then, Doctor, that with respect to all of the names that appear on the list, Dr. Mancer and yourself had a discussion about each of these entries that was to be made?

A. We had some discussion but, as I say, because of the pressure of the time I would doubt that we could have gone one by one.



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Q. All right.

3

A. But this list in fact, that was intended as a guide. Like, this was to go with the individual reports.

4

2

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Q. The individual autopsy reports?

6

A. With the individual autopsy report and this was just for quick glance review of the type of cases we had.

7

8

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Q. I see, Doctor, all right.

10

Doctor, could I direct your attention to the column of information that is entitled "Diagnosis"?

11

A. Yes.

12

Q. Do you see that?

13

A. Yes.

14

Q. Dr. Mancer has testified and

15

this, Mr. Commissioner, is in Volume 40 at page

16

8108 that the information in this column related to

17

the pathological diagnoses rather than the clinical

18

diagnoses which may have applied in each case. Do

19

you agree with that?

20

A. Yes, I believe, or whatever

21

information we had as far as pathology was concerned, yes.

22

Q. The information contained in

23

the column related then to the pathological findings

24

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and information that was available?

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A. Yes.

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Q. All right. Doctor, dealing with the next column, the information that is contained in the column entitled "Cause of Death", were the entries contained in that column again a matter of joint discussion between Dr. Mancer and yourself?

9

A. Yes, I believe so.

10

11

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Q. All right. Can you help me, Doctor, as to what information was available to you in respect of the information completed and filled in the cause of death column. What information was available upon which those entries were based?

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Q. All right. Was there anything other than the autopsy reports that you had regard to?

A. No, we only reviewed the autopsy reports which have been completed to the stage they could be completed at that point, which would have included microscopic examinations, for instance.



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Q. Did you have the medical records of the various children before you when this chart was being completed?

5

A. No, we did not.

6

7

8

Q. I take it, Doctor, that if the autopsy reports or the pathology file if you will also contained digoxin level results, you would have had those available to you?

9

10

A. Well, that would be in the clinical chart.

11

12

Q. I am talking now about postmortem digoxin level results?

13

14

A. Yes, the postmortem digoxin results, the ones we know of, what the levels were, so, that would be with the report.

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Q. All right. Well, Doctor, when we look down the column under Digoxin for Justin Cook, one of the children upon whom you performed the autopsy, there is an indication that postmortem blood was available but there was no level recorded on this document. Do you recall now at the time this document was completed whether or not you knew the Cook postmortem digoxin level of greater than 100 nanograms?

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A. Yes, I knew about it but I did



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2 not have it in writing. So that the levels which are
3 indicated here, those would be levels which we had
4 lab report in writing.

5 Q. They were confirmed levels then
6 from the Biochemistry Department?

7 A. That's correct, yes.

8 Q. Doctor, dealing first with the
9 cases of Kevin Pacsai, Allana Miller and Justin Cook,
10 the ones in respect of whom you made the entries?

11 A. Yes.

12 Q. In each of those cases in the
13 cause of death column you have indicated "Digoxin
14 overdose"?

15 A. Yes.

16 Q. Would I be fair to suggest
17 to you, Doctor, that that information was recorded
18 in that column by you on the basis of the conclusion
19 that you had reached and recorded in the final autopsy
20 report for each child?

21 A. Yes, I think the overdoses meant
22 in the same sense as the toxicity, but again, this
23 was in this period and/or the atmosphere of the time
24 at which we are told there is a suspect and this is
25 the primary concern. It is put in terms I think for
the lay person to understand what that means. Toxicity --



6 1
2 they might not interpret it in the same light if you
3 put overdose.

4 Q. I take it though, Doctor, at
5 the time that you made those entries and placed that
6 information in the cause of death column, it was
7 your conclusion that those three children had died
8 from a digoxin overdose?

9 A. Well, that's what the explanation
10 was at the time, yes.

11 Q. All right. That was your
12 conclusion at the time?

13 A. Well, it wasn't my personal
14 conclusion that was based on information I was given
15 that this is what actually happened with the children
16 with overdose by someone or somebody.

17 Q. Okay. Well, we know, Doctor,
18 that in respect of the contents of the final autopsy
19 reports for Kevin Pacsai, Allana Miller and Justin
20 Cook, you had indicated the immediate cause of death
21 to be digitalis toxicity?

22 A. Yes.

23 Q. Am I correct in that?

24 A. Yes.

25 Q. It was your conclusion that that
was the cause of death of those children?



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A. Yes.

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Q. Isn't that what you were really
saying in the column Cause of Death?

4

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A. Yes.

6

Q. Doctor, may we turn then to
the case of Kristin Inwood. Do you see again in the
Cause of Death column where it says "Undetermined"?

7

8

A. Yes.

9

Q. All right. Can you help me as
to what that entry meant?

10

11

A. This again is in the context
of trying to help the investigation and to single
out cases and where there is a slight or any slight
possibility that digoxin may play any role or possibly
any role and it would be a kind of a case where you
don't have a definite uncontestable anatomical cause
of death. So, that is one of the cases where there
was no apparent immediate cause of death.

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Q. Was that a case as well, Doctor,
where there was in your view a strong suspicion about
a possible overdose of digoxin?

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A. It wasn't our suspicion.
This was, as I say, based on a review of these cases
and on the basis of what the actual anatomical findings
were. So that in a sense cases in which there was some

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possibility that digoxin might play a role we indicated them to be investigated further.

Q. In the case of Kristin Inwood, Doctor, did you think at that time that it was a strong possibility?

MR. SCOTT: Of what?

MS. CRONK: I'm sorry, I thought ---

MR. SCOTT: I'm sorry, I don't understand the of what?

MS. CRONK: I thought the Doctor had said that when they listed "Undetermined" for Kristin Inwood it was because he felt there was some possibility that that death might be attributable to digoxin overdose. I thought that was the context of the remark, perhaps I'm wrong.

A. Well, it is not exactly in that context. It is in the context that you have here, I don't know, nine cases, okay, and then you look at the pathology findings and somebody asks you, so, if you were told all these patients died of digoxin, which ones would you pick in terms of, if you try to correlate the anatomy with the cause of death or in terms of what your anatomical cause of death is. So that the cases in which we could not or which from the report didn't appear that there



1
2 was a clear cut cause of death, in such a group those
3 would be singled out as a possible suspect of cases
4 to be further investigated.

9 5 Q. And Kristin Inwood was one
6 of those?

7 Q. Thank you, Doctor. Doctor,
8 with respect to Jordan Hines, again, do you recall
9 in the process of completing this document having
10 reviewed the final autopsy report on Jordan Hines?

11 A. I don't believe that I reviewed
12 that particular autopsy.

13 Q. Can you remember seeing the
14 preliminary autopsy report?

15 A. I can't recall whether I saw
16 it.

17 Q. I take it Dr. Becker did not
18 participate in the preparation of this document?

19 A. I don't believe that he was
20 involved, no.

21 Q. Did you have any discussions
22 with Dr. Becker concerning the autopsy results in
23 the case of Jordan Hines at the time that you were
24 preparing this document, as best as you can recall?

25 A. Well, I personally did not -
I don't recall whether I would have talked to him



1
2 about it but this whole investigation was under a
3 cover of secrecy. So that initially I would be
4 representative of pathology who was involved in those
5 meetings and it was more or less kept secret. So
6 that when Dr. Mancer got involved the next day there
7 was only two of us who knew what was going on.

8 Q. I see.

9 A. So that we would not have
10 probably contacted Dr. Becker and asked him some
11 details about it. This again would be based on the
12 report, what he wrote down.

13 Q. Doctor, there is one final
14 child to whom I direct your attention and that is
15 Charlon Gardner. You will see in the cause of death
16 category for that child an indication that it is
17 probably natural. That is the only one described in
18 that fashion on this document, Doctor. Can you tell
19 me what was meant by that entry?

20 A. Yes. Yes, perhaps I mentioned
21 before that, you know, it basically boils down to
22 what pathologists consider as cause of death. I
23 think I mentioned before that it is not black and
24 white but there are grades of accepted or how you
25 would express an opinion, you know, how strong your
impression is that this is the cause of death,



1
2 et cetera.

3 So, it is in light of that. So, in
4 this particular case probably natural would refer to
5 the fact that the infant had a severe congenital
6 heart disease, as one thing and, in addition, it had
7 ischemic lesions in the miocardium which would be
8 evidence of hypoxia, which in itself could be cause
9 of death. But if you take a sort of a sinister
10 approach and you say this patient was, you know, you
11 couldn't absolutely rule out that such a patient might
12 not have digoxin overdose or toxicity.

13 Q. Thank you, Doctor.

14 Doctor, finally there are two other
15 children that we have discussed and in respect of
16 which you have testified that you performed or
17 supervised the autopsies. Those are Amber Dawson
18 and Phillip Turner. Neither name appears on this
19 document. I take it that is because neither died
20 during the period of the beginning of January through
21 to the end of March, 1981.

22 A. Yes, that's what it says.

23 MR. SCOTT: How does he know. My
24 friend hasn't established why their name isn't on
25 the document. The document was prepared by the
police.



1
2 THE COMMISSIONER: The name isn't
3 on the document because it wasn't ---

4 MS. CRONK: I am talking about Exhibit
5 198.

6 MR. SCOTT: It wasn't presented by
7 the police, precisely.

8 THE COMMISSIONER: Well, I think that
9 is the reason, Miss Cronk.

10 MS. CRONK: I didn't think there was
11 any secret to it.

12 THE COMMISSIONER: No, no, but you
13 see - well, Mr. Young may be able to tell us more
14 about this.

15 MR. YOUNG: Well, I don't mean to
16 confuse the issue but I don't think that we have
17 established that Exhibit 198 was definitely prepared
18 from Exhibit 197 or that the information to prepare
19 Exhibit 198 came from the police, that is something
20 we are going to have to determine later.

21 MR. SCOTT: Well, I'm sorry, that may
22 be technically correct, but the names on Exhibit 197
23 are the same and are in the same order and involve
24 the same omissions, which is significant. So, is it
25 not a fair inference at this stage, perhaps the
witness could be asked.



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THE COMMISSIONER: I would think it was. Can you help us. I am going to ---

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THE WITNESS: Yes. Well ---

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THE COMMISSIONER: Well, before you answer the question I just want to try and phrase it in a manner that is not leading if that is possible.

7

THE WITNESS: Yes.

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THE COMMISSIONER: It is not fashionable around here to ask unleading questions but I am going to try.

10

11

THE WITNESS: I think I can answer that.

12

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THE COMMISSIONER: Yes, all right, you are going to answer it before the question is given? That's the real purpose. I want you to put your mind to it. Do you remember whether or not you prepared Exhibit 198. Do you know what I'm talking about?

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THE WITNESS: Yes.

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THE COMMISSIONER: That is the list of names from Exhibit 197.

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THE WITNESS: Yes I did.

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THE COMMISSIONER: Yes. You didn't give any thought to putting any - who says he's not leading - did you give any thought to putting

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other names in. Did you give any thought as to whether there might be other children that you might make a report on?

THE WITNESS: Oh, absolutely not.

THE COMMISSIONER: Oh, no, all right.

MS. CRONK: I think that is very clear, sir. Those are all my questions, Doctor, thank you very much.

THE COMMISSIONER: All right. Well, I think we will rise for 15 minutes. Will that give you time? That seems to give you lots of time to prepare your examination. How long do you think you will take?

MR. SCOTT: I think I will be, unless something ontoward happens I think I will be the afternoon.

THE COMMISSIONER: Well, if anything ontoward happens you will be longer than that.

MR. SCOTT: No, shorter. That's my experience if I run into rough going I just stop.

THE COMMISSIONER: I see, all right. Well, we will rise for 15 minutes then.

MR. SCOTT: That is not to be a hint, Dr. Cutz, as to how to cut this short.

---Short recess.



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DP/cr

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---On resuming.

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THE COMMISSIONER: Yes, Mr. Scott.

4

EXAMINATION BY MR. SCOTT:

5

Q. Dr. Cutz, you were here this morning beginning at 10 o'clock and heard the evidence given by Dr. Taylor?

6

7

A. Yes, I was.

8

9

Q. And in particular, sir, you heard my examination of him when I discussed with him the manner in which he had taken samples from the gutter and from the leg in the case of the Baby Estrella?

10

11

12

A. Yes, I did.

13

14

Q. And you heard Miss Cronk's detailed and abundantly clear re-examination, did you?

15

16

MS. CRONK: I give up.

17

Q. Did you hear that?

18

A. Yes, I did, yes.

19

Q. What I want to ask you is, in the circumstances related by Dr. Taylor, would you as a pathologist have relied on the sample taken from the gutter?

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A. No, I would think it would be completely useless.

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Q. You have heard him describe how the sample was taken from the leg and the precautions he took in taking that. Have you heard that?

A. Yes.

Q. Would you be prepared to rely on a sample taken in that fashion or would you not, or would you do something else?

A. I think under the circumstances that would have been a much better sample than the gutter sample.

Q. Yes.

A. The way he described it, he tried to minimize contamination from the outside, but I do not think one can be absolutely certain that there is not some degree of contamination that is indirectly or directly from the pelvis or those areas, plus the fact that in order to obtain the blood they had to exert quite a lot of pressure on those tissues, perhaps introducing some more edema fluid or some fluid from the muscle which might have possibly caused some contamination as well, so that in summary I would think it was a much better sample, but I would have some doubts as far as they would be completely uncontaminated.



3
1
2 Q. The evidence so far is that
3 that sample produced a reading I think of greater than
4 4.7?

5 A. Yes.

6 Q. Assuming for the moment, and
7 I don't ask you anything about this, but assuming
8 that you knew how the sample was taken and wanted
9 to pursue your investigation further, what would you
10 have done?

11 A. With a reading of 4.7 ---

12 Q. It is greater than 4.7.
13 It is marked with that little Indian arrowhead thing.

14 A. Yes. That would I guess imply
15 that a more precise reading would be obtained if the
16 sample was further diluted.

17 Q. It was not, as I understand it.
18 If you elected to pursue the matter
19 further, what would you have done, it not being possible
20 to dilute the sample further?

21 A. I would think that in such a
22 circumstance the level should not be more than in the
23 tens. I would not expect a level with the initial
24 reading of 4.7 to be more ---

25 THE COMMISSIONER: I once again have
to say greater than 4.7. I think what Mr. Scott is



1
2 asking is, assuming that you could not determine
3 precisely what the reading is, if you wanted to
4 pursue the matter, what would you do?

5 THE WITNESS: I think in a postmortem
6 sample that would be within the range of digoxin
7 level in a person who receives the drug.

8 THE COMMISSIONER: It may well be.
9 If it is 4.7, I agree with everything you say, but
10 if it is greater than 4.7, I do not know how we know
11 what it represents.

12 THE WITNESS: Unless we know how much
13 greater than 4.7 it is, and I assume that if it is
14 in that range that it would not, hypothetically, if
15 it could be diluted, I would not expect the level to
16 exceed ten.

17 Q. All right. And I take it that
18 if you decided to pursue the matter further you would
19 attempt to dilute it?

20 A. Yes.

21 Q. Let us assume, and I think
22 this is the case, that the sample was not large
23 enough to permit a dilution. Are you with me so
24 far?

25 A. Yes.

Q. If you wanted to pursue the



1
2 matter further as an investigative or academic
3 exercise, who would you speak to or what would you
4 do then?

5 A. I think to that point, or
6 at least from the testimony, it appeared that there
7 was some indication in the clinical history that
8 the patient had some difficulties with the digoxin
9 handling, with the levels fluctuating, which I don't
10 know what the numbers were but ---

11 Q. Dr. Cutz, I don't know
12 anything about any of these things. Let me be
13 perfectly clear. I am just trying to get you to
14 tell me what you told me in the hall when I asked
15 you this very same question. If you had a reading -
16 I don't know anything about it - if you decided to
17 pursue the investigation ---

18 MR. LAMEK: He thought better of it.

19 MR. SCOTT: Well, maybe you have.

20 MR. MARSHALL: Why don't you tell
21 him what he said and ask him if he agrees with it.

22 MR. SCOTT: You know the rules of
23 this game.

24 MR. MARSHALL: You have violated them
25 all so far.

MR. SCOTT: This is a lawyer's joke,



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you will have to forgive them but - if you decided to pursue the investigation and you could not dilute and the reading was greater than 4.7, would you speak to someone about it?

THE WITNESS: It it was in a situation like it was, that was an isolated incident.

Q. Yes.

A. And you could not explain it, you could perhaps talk to the clinicians.

Q. Now, you would talk to the clinicians?

A. Yes.

Q. And what would you want to find out from the clinicians?

A. Well they would probably be more knowledgeable about the levels of digoxin than the pathologists are.

Q. Would you not want to find out from them the pattern of digoxin testing during life?

A. Yes.

Q. If you did that, in a case like this, and the clinicians told you that the baby died on January 11th and on January the 7th it had had a serum level of greater than 5, and on January 8th it had had a serum level of greater than 4.7 ---



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THE COMMISSIONER: Greater, or just

3

4.7?

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MR. SCOTT: Greater, according to

5

my note.

6

THE COMMISSIONER: You are probably

7

right.

8

MR. SCOTT: And that those had been

9

diluted to 9.4 and 7.8 respectively - are you with
me so far?

10

A. Yes.

11

Q. And that on January the 9th

12

that was 4.7, would that lead you to draw any

13

conclusions about the significance of the postmortem
level in terms of death?

14

A. No, it would not.

15

Q. What would you think about it?

16

A. It is in the same range - what

17

was recorded while the patient was alive.

18

Q. And therefore what would you

19

say? Would you say that digoxin played a part in that
death or not?

20

A. I don't think you could say

21

that as being the primary problem in the patient.

22

Q. All right. You have told the

23

Commission that on Monday, the 23rd of March, the

24

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police for the first time as far as you know came
to the Hospital?

3

4

A. No, I heard that the police
were investigating, but this was the first time I
saw them.

5

6

Q. That you met them?

7

A. Yes.

8

Q. Do you recall whether you

9

met them in the morning or the afternoon?

10

A. It was in the morning.

11

Q. And you met them as the only
representative of the Pathology Department?

12

A. That is correct, yes.

13

Q. And the following day, the

14

Tuesday, both you and Dr. Mancer met them?

15

A. That is correct.

16

Q. Then I think we have evidence

17

that on the 25th, which would be the Thursday, Miss
Nelles was charged with one murder?

18

A. Yes.

19

Q. I take it that there was a

20

press release and the fact of that criminal charge
came to your attention pretty promptly?

21

22

A. Yes.

23

Q. Now, at that time, had you

24

25



1
2 written the autopsy report in any of Pacsai, Miller
3 or Cook? I know you had done the autopsies and
4 perhaps got certain readings but had you dictated
5 the reports in any of those cases?

6 A. Part of the report would be
7 done almost immediately after autopsy which would
8 record the weights, the gross description of organs,
9 but it would not contain any information about
10 conclusions about the case, so it is basically a
11 recording of findings.

12 Q. Well, the part that is the
13 long chapter, the part that is called pathological
14 discussion, I take it would not be done until you
15 were dictating your report?

16 A. Yes. Once all the findings
17 in the examination are completed then you would do
18 the discussion.

19 Q. I take it in the cases of Pacsai,
20 Miller and Cook, the pathological discussion in each
21 of those cases was dictated after the police came
22 into the hospital?

23 A. That is correct.

24 Q. And particularly after your
25 meeting with them on Monday or Tuesday?

A. That is correct.



Cutz, ex.
(Scott)

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Q. Can you help us whether it was done before or after Wednesday when Miss Nelles was charged?

A. We were told to review the cases which appeared on the list on Tuesday.

Q. Yes.

A. So that the actual reports would have been prepared between Tuesday at 11 o'clock to 10 o'clock the next day.

Q. The actual pathological discussion?

A. That is correct.

Q. Now, before you met with the police on Monday, you had heard that they were doing some investigation?

A. That is right.

Q. And I don't ask you to vouch for the gossip you heard, there is a lot of gossip that goes around, but did you hear what they were investigating?

MR. BROWN: Mr. Commissioner, with respect to Mr. Scott, this is sort of treading on the razor's edge of the two phases of the Inquiry. I do have some concern with the question as he has phrased it, and I think if we get into this discussion



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of what the police advised the doctors and what the doctors informed the police we are properly within the ambit of the second phase.

I realize there is some overlapping ---

THE COMMISSIONER: I think I - you understand the problem. Admittedly we are going to be stuck with it later on today but as long as this is directed to the cause of death and some of the - it probably has something to do with the --

MR. SCOTT: Miss Cronk has asked some extensive questions about exhibits 178 and 179 which were probably prepared on the Tuesday -- sorry, Exhibits 197 and 198 - (thank goodness we have these statisticians here; they help me a lot) and Miss Cronk also asked about these reports which have now been placed as having been prepared at the same time.

The doctor, in his answers to Miss Cronk, on three or four occasions said that they reflected something of the atmosphere at the time, and it is that I am pursuing.

THE COMMISSIONER: You carry on. Bear in mind that there are going to be yells and screams when we get into the second branch.

MR. SCOTT: Q. Did you hear before the Monday what the police were investigating?



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2

A. I did not.

3

Q. When you went to the meeting

4

on the Monday was it made apparent to you what was
being investigated?

5

A. Yes, I think so.

6

Q. What were you told was being

7

investigated?

8

A. What was investigated was the

9

fact that several babies died on certain wards - or

10

a ward - with high digoxin levels for which there

11

was no apparent explanation.

12

Q. Let me put it more directly.

13

Was the word "murder" or "possible murder" suggested
in any fashion?

14

A. I am not sure whether that

15

word was actually used but the implications were that

16

they are after somebody who might be deliberately

17

causing this problem.

18

Q. Let me get at it, Dr. Cutz.

19

Did you think when you went to these meetings on

20

Monday and Tuesday that the police were investigating

21

some accident, or did you think that they were

22

investigating a murder. They may be right or wrong.

23

What did you think they were looking for?

24

A. This is unprecedented in the

25



Cutz, ex.
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Hospital history. The first thing would be they might be looking for some kind of accidental problem, mix-up with drugs or lock-up of the drugs is one possibility and the second one is looking for somebody who is deliberately ---

Q. Dr. Cutz, they may have been there on some kind of paper chase. I am not interested in that.

What did you believe about why they were there?

A. I had never seen the police in the Hospital before in that sort of capacity so the conclusion as far as calling the Homocide Squad is to investigate a homicide.

Q. Can you tell me what you told me out in the hall again. Why did you think they were there?

A. To look for a person who deliberately poisoned the children.

Q. A murderer, isn't that right?

A. Yes.

Q. All right.

Were you led to believe on that day, and I'm not saying that the police were right or wrong, it will be for the Commissioner in the end to



14 1
2 decide, but were you led to believe that the murder
3 weapon, to use the language of Agatha Christie,
4 was digoxin?

5 A. Yes, that is right.

6 Q. Now, I take it that there
7 was nothing that happened between Monday and Wednesday
8 that changed your sense of what was happening?

9 A. Yes.

10 Q. There was a search for a
11 murderer, and digoxin was what had killed these babies.

12 A. Yes.

13 Q. And I take it, you are a
14 pathologist and do your work and do it effectively
15 and efficiently?

16 A. Yes.

17 Q. And you and I accept that the
18 police, I want Mr. Percival to hear this, accept that
19 the police do their work efficiently?

20 A. Yes.

21 Q. And I take it that by Tuesday
22 you believed that there had been a murder in the
23 Hospital, horrible as it was to contemplate.

24 A. I was made to believe that,
25 yes.

Q. And by Wednesday when there



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was an arrest, you are not a cynical defence lawyer like these chaps here, you believed that they had found the murderer?

5

A. Yes, that is correct.

6

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Q. When you were asked on the Tuesday, I think you said, when you got Exhibit 197 and you were asked to look at these files, I take it that you believed, I don't care who told you, but you believed that these were babies that someone thought had been murdered?

11

A. That is correct.

12

13

Q. And you were asked to finish up the autopsy report, right?

14

A. Yes.

15

16

17

Q. And you were asked to look at their files from the point of view of the murder case?

18

19

Q. But from the point of view of the fact that there might be a murder case?

20

A. Yes.

21

22

23

24

25

Q. When you were asked to finish up your reports quickly, this was not just because the police were distraught at how haphazard the Pathology Department was, it was because they wanted



1
16 2 these reports as part of the murder investigation?

3 A. Yes, I believe so.

4 Q. I take it that when you were
5 given the list, as I think you told Miss Cronk, you
6 were to look at your pathological studies?

7 A. Yes.

8 Q. And I take it that what you
9 were asked to do was determine if digoxin might -
10 you said might, not me - be a factor in any of these
11 deaths?

12 A. Yes.

13 Q. And you listed the ones in which
14 it would?

15 A. Yes.

16 Q. Now, did you do the same
17 thing when it came to preparing your final autopsy
18 report in these three cases, in Pacsai, Miller and
19 Cook?

20 A. Yes. The levels in those cases
21 were known at the time.

22 Q. Now, in those three cases -
23 let me begin again, and I will be coming to it in
24 more detail later. I take it that one of the things
25 a pathologist has to do is take the raw findings that
he makes, of which there may be three or four, all of



17 1 which point to death, is that right, and then select
2 one, if he can, as the probable cause of death?

3 A. Yes.

4 Q. And in most of these autopsy
5 reports you have listed observations, sometimes two,
6 sometimes three, sometimes four, any of which might
7 cause death?

8 A. It may be either a single
9 or multiple factors. It depends on the case.

10 Q. And I take it that if you
11 can you make a careful and calculated judgment, better
12 than a guestimate, as to what the actual cause of the
13 dying was?

14 A. Yes, this is basically an
15 opinion.

16 Q. What I am asking you is, when
17 you came to prepare the final autopsy reports in
18 Pacsai, Miller and Cook, I have no criticism of them,
19 did your belief that there were murders, that these
20 three babies, in view of others had been murdered,
21 and that digoxin was the murder weapon, and that by
22 Wednesday somebody had been charged, did that play
23 any part ---

24 THE COMMISSIONER: I am having a little
25 difficulty. Could you just start without that last



1
2 comment because I do not think - I think that is
3 something that was not known until Wednesday.

4 Q. I am sorry, let me begin again.

5 When you came to prepare the final
6 autopsies and Exhibit 198, did the fact that you
7 believed that a murder had taken place and that you
8 believed that digoxin had been the murder weapon, did
9 that affect the choices you made in writing the report,
10 when it came to the pathological discussion?

11 A. In these three particular cases,
12 the levels which we had in hand were in such a high
13 level which one could not explain by the knowledge
14 available at the time, and the possibility that this
15 actually happened looked quite real. So in other
16 words ---

17 Q. The possibility that what
18 actually happened?

19 A. The digoxin was used to murder
20 these babies. So you could not explain on the basis
21 of the pathological and clinical findings why these
22 high levels were present.

23 Q. Did your knowledge of the
24 police investigation play any part in that?

25 A. Well, it would strengthen the
theory that this actually happened.



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Q. What would strengthen the

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theory?

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A. Well, in trying to explain

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as to why you get these high levels and if you go

6

through the possibility of accidental errors or

7

whatever, and then somebody deliberately doing it,

8

then assuming that all these accidental things have

9

been ruled out and you are left with the possibility

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of an intentional thing, then I do not think you need

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any more support.

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Q. Well, let me ask you this, if the police had never come into the building would those reports be the same as they are now?

A. Well, if the levels were known they would certainly be recorded, and it would certainly be reported and the same situation may arise.

Q. Well, let me ask you to turn to the report in Pacsai, would this report have been the same if the police had never come into the building?

A. Well, the report since it was a coroner's case, if I couldn't solve it I would put it in the hands of the coroner to try to explain or try to investigate further how this high level is obtained, how it is possible.

Q. You see, and maybe you can help me with this, and maybe I should have asked Dr. Mancer. Dr. Mancer's report on the - I think it was Dr. Mancer's report on Estrella, and you have seen that report haven't you?

A. The autopsy report?

Q. Yes.

A. No, I don't believe I saw it.



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MR. MARSHALL: What is this now,
Mr. Scott?

MR. SCOTT: The Estrella file, the
autopsy report.

Q. I will show it to you, it is
in Exhibit 91 at page, the beginning of page 9, and
he deals at length with the condition of the baby.
Then, at the very end of that, on the last page,
the third paragraph he says:

"These findings likely represent acute
and chronic sequelae of hypoxia
secondary to congestive heart failure
and respiratory insufficiency. The
degree of cardiac and respiratory
failure are considered sufficient
cause for death in this case."

And what he is saying, if I understand it right,
there he is saying that the heart condition is
sufficient to have caused death?

A. That is correct.

THE COMMISSIONER: Are we now looking
at Estrella, Mr. Scott? I am lost.

MR. SCOTT: Yes, page 12.

THE COMMISSIONER: Yes, I have it.

MR. SCOTT: The top paragraph of



1
2 that page.

3 THE COMMISSIONER: Oh yes, all right.

4 MR. SCOTT: Q. Now, if there were
5 no digoxin assays presumably that is where he would
6 have stopped?

7 A. That is right.

8 Q. But there were, and we have
9 heard all about them, God knows, and he deals with
10 them in the last paragraph and he says:

11 "Samples of postmortem blood were
12 obtained for assay of digoxin levels.
13 These samples were contaminated slightly
14 by edema fluid and ascitic fluid. The
15 digoxin levels on these samples
16 measure 72. This level is markedly
17 elevated over the normal therapeutic
18 range, and if accurate would explain
19 the death of the patient."

20 Now, I don't ask you to make any comment
21 on that, but for the purposes of my next question
22 would you not agree that that is a very qualified
23 comment on digoxin as a cause of death?

24 A. Well, it is qualified to the
25 extent that you have a number of findings which each,
or in concert together could explain death, and it is



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a question of picking one which you think is the most significant.

Q. Well then you see on the Tuesday following the police, Estrella is one of the names on this list, the top name?

A. Yes.

Q. And you and Dr. Mancer discussed what you should put under "Cause of Death" as a short form to help the police?

A. Yes. Now, I believe the Estrella comment was made by Dr. Mancer himself.

Q. All right. What I am saying to you is that under that "Cause of Death" he doesn't tell us anything about the acute and chronic sequelae of hypoxia, does he?

A. No, he does not.

Q. He goes to his secondary reason and lists it as the only reason.

A. That is correct.

Q. So he turns the secondary reason that existed in January, or early February, into the primary reason on March 22nd, am I right?

A. Yes, that would be in light of the investigation.

Q. That you see is what I want



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to ask you about. Why should the investigation make any difference in what you pathologists are doing?

A. Well, I guess the levels were the reason for the investigation.

Q. Yes.

A. So that I don't think it really influenced the pathologist in terms of what the findings are. It may influence in terms of the interpretation of the findings and assigning the significance to this finding, but again these are opinions, those are not absolute facts.

Q. Let me put it this proposition to you. If, if you had 10 cases which pointed to congestive heart failure as a primary cause, and digoxin toxicity, that is readings about 5, or up to 72 or whatever you want, would the fact of the police investigation into murders, in which it was thought digoxin was the means, play any part in deciding which of those you listed as primary and which are secondary?

A. Well, if there was a high level above what we rule as being the sort of usual level then I think the toxicity would have to come as the primary thing under those circumstances, because this is a matter to be investigated, that is



EE6

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what it says, it doesn't say who, but ---

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Q. Well, I take it that these

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figures - let me put it this way: that has never

5

crossed your mind until the police arrived, that

6

there might be a murder?

7

A. That is correct.

8

Q. And it never crossed the mind

9

of any other doctor that you saw in the Hospital?

10

A. Well, I don't know, but it

might have, I don't know.

11

Q. But as far as you know?

12

A. As far as I know, I don't

13

know.

14

Q. And are you able to give any

15

reason, or account, of why the secondary reason given

16

in the Estrella final autopsy becomes the primary

17

reason on this 198?

18

A. No. I would think that this

19

was in the context of all the subsequent cases.

20

That is I assumed Dr. Mancer had the finding prior

21

to it and then it took a different light once these

22

other cases came to light, and it again would be a

23

kind of case which would be looked into in great

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Q. And when one of you in this

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meeting decided that the Hines baby was to be marked "Undetermined", do I understand correctly that that meant that there was no evidence that pointed to digoxin toxicity in that case?

A. No.

Q. Am I right, or am I wrong?

A. Well, that particular case didn't have an established anatomical cause of death.

Q. All right. Is that why you marked it "Uncertain"?

A. Yes.

Q. Well, why did you mark Estrella as digoxin overdose when it did have an anatomical cause of death?

A. Well, I think again this is the question of choice which you assigned as primary, secondary, et cetera, and in light of the level of 72 I suppose that must be brought to the attention ---

Q. Would I have it right if I said this; that in a number of these cases you had a choice to make as between an anatomical cause of death which might be verified and a digoxin death?

A. Yes.

Q. Based on the elevated reading



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so-called?

A. Yes.

Q. And that after you believed there was a murderer, and after you believed that the murder weapon was digoxin, and after you had four high readings, you went to digoxin as the cause for these reports?

A. Yes, one was ---

Q. Well now, one other thing just to clear it up. I take it that throughout this period, at least until the arrest occurred, and I am showing my friend Mr. Sopinka how discrete I am being about these questions, during this period and at least until the arrest occurred, I take it that the conventional wisdom in pathology was that a reading, a reading of digoxin following death more or less accurately reflected the reading that would have existed at the moment of death. Assuming there were no technical difficulties in either taking the reading or in assaying it.

A. Well, I have to say that we really didn't know what happens to digoxin post mortem. There is a possibility like with other drugs and other substances, a lot of them become elevated after death, and in some instances it is a



Cutz, ex.
(Scott)

EE9

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meaningless result.

3

Q. Let me put it to you this way.

4

One thing you knew was about potassium?

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A. Yes.

6

Q. You knew that if you had a

7

potassium reading of 5 at death that might become

8

10 or 15 post mortem depending on when it was taken?

9

A. Yes.

10

Q. And you had learned to

11

discount that because medical science had told you

12

that a postmortem reading for potassium was unreliable

13

if you were looking for the amount of potassium in

the system at the moment of death?

14

A. Yes.

15

Q. Now, everybody has told us

16

that postmortem digoxin samples were not routinely

taken?

17

A. Yes.

18

Q. Had you ever taken one before

19

these cases?

20

A. I did not, no.

21

Q. In all your experience?

22

A. No.

23

Q. Had you ever heard of a

pathologist taking one?

24

25



EE10

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A. Not to that time, no.

3

Q. All right. Well now, you

4

decided to take one, or you were taking one; what

5

did you believe about the reading you got assuming

6

the assay was accurate and the method was uncontamin-

7

ated, or did you have any belief about it?

8

A. Well, I think this first came

9

in relation to the Pacsai baby. As I explained

10

before this was to look into the various possibilities,

11

one of them which was digoxin adverse effects, I
wouldn't call/ ^{it} toxicity, which I mean in a therapeutic

12

type of situation, which is well known the important

13

interaction between digoxin and potassium.

14

For instance, if you have a low

15

potassium level then there is heightened adverse

16

effect of digoxin on the heart. So that you could

17

have a situation where you have a combination of

18

say low potassium and a slightly elevated digoxin

19

which happens in a clinical situation, and this is

20

not a criminal type of situation, it is a clinical
situation.

21

Q. Dr. Cutz, I don't want to

22

cut you off, but I don't think you have understood

23

my question. Let me give you an example. If I have

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a student and he comes to me and he says, if I do

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such and such what is the judge going to say? I don't know what the judge is going to say but my experience let's me make a good guess, I am sometimes wrong and I will tell him the judge is going to say you can't do that. Now if a student came to you on March 12th and said are digoxin readings post mortem an accurate reflection of digoxin in the blood at the moment of death, what would you have said to him?

A. Well, at the time I would have to say, I don't know.

Q. Now, did you have any belief?

A. No, I am sorry?

Q. Did you have any belief? You have told us that you didn't know, and I accept that as a scientific matter, but did you think that digoxin was like potassium, or do you think it was more accurate than potassium, or did you have any belief on the subject?

A. Well, I didn't really know what the answer would be without having to either look up the literature and/or do some more tests to be sure that, you know, do the kind of correlation in the cases where you know what the pre-mortem level is with what you find post mortem.



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Q. And I take it that until, leaving
aside the Estrella sample until Pacsai, it was not
possible in the circumstances as you knew them at
the Hospital to do that?

A. No.

Q. Am I right about that?

A. Yes.

Q. So when the unfortunate Pacsai
death occurred, you didn't know what this kind of
reading meant?

A. That is right.

Q. And I don't want to leave you
out on that limb all alone, medical science didn't
know what this reading meant as far as you under-
stand?

A. Yes, that is my understanding.

Q. And the only way to find out
what it meant would be to come upon a case where you
could correlate pre-mortem reliable samples with
postmortem accurate samples?

A. That is correct.

Q. And see what the relationship
was?

A. Yes, that is correct.

Q. And the first case where that



1

2

would have been possible to do that in your Hospital,
3 we will leave aside Estrella for the moment, was
4 Pacsai, the baby Pacsai.

5

A. It would have been Miller.

6

Q. I'm sorry, Miller?

7

A. Yes.

8

THE COMMISSIONER: No, Miller is
after Pacsai.

9

THE WITNESS: Yes.

10

MR. SCOTT: Q. Why not Pacsai?

11

A. Well, Pacsai, I didn't know
12 about Estrella.

13

Q. Yes.

14

A. That is if it was in my
situation.

15

16

Q. Oh, I see, yes. And you
discounted Pacsai as an artefact?

17

18

A. No, I didn't discount it as
an artefact, but you know, I had doubts as to what
19 it meant. You know, I was not certain how to
20 interpret the level.

21

Q. But if you had wanted to do
a comparison?

22

23

A. Yes.

24

Q. Is it Pacsai or Miller that

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3 would have provided a pathologist the first case to
4 do the correlative comparison?

5 A. I think it would be either
6 of the two because both babies received digoxin. I
7 am not sure of the timing as to when the last
8 sample was measured in life, but it probably was
9 measured ---

10 Q. Well now, I take it that since
11 that time happily some scientific work has been done
12 that has been reported in the literature?

13 A. Yes.

14 Q. And more is being done?

15 A. Yes, that is correct.

16 Q. And can you say whether in
17 the end it will turn out that digoxin is like
18 potassium, that is it elevates substantially following
19 death, or is not like potassium, or is it too early
20 to say?

21 A. No, I think the potassium
22 situation is much more simple, because the explanation
23 for the increased levels can be correlated with
24 the time of death, in that there is a release of
25 potassium which increases over time. I think with
digoxin it is a much more complex situation because
it is a drug which is administered in different dosages



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under different clinical situations; death occurs
in different time intervals after the drug is
administered, so the conditions are much more variable.

Q. Do I have it this far then,
as far as you are concerned as a pathologist; that
you now, in 1983 are not much better off in telling
us what a postmortem digoxin reading means than you
were in 1981? I am not being personal about it, but
isn't that fair?

A. Well, I think the studies or
what has been learned since indicate that there is
a variation which would indicate some doubts that
there is a scientific explanation.



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Q. Let me see if I can put it this way. If you are better off as a pathologist now than you were in March, 1981, I take it you are only better off because you know that there may not be any correlation?

A. Yes.

Q. Yes. Can we stop now?

THE COMMISSIONER: Yes, I think so.

Not that I don't find it all fascinating but we are getting on and we promised Mr. Sopinka that we would attend to his problems at this time.

MR. SCOTT: Well, perhaps the witness may be excused, or he may like to stay and hear this fascinating exchange.

THE COMMISSIONER: Before you go though, Doctor, what is your availability tomorrow and the next day, just in case we should find an opening?

THE WITNESS: Well, I would be at the hospital.

THE COMMISSIONER: I see. You would have to make arrangements?

THE WITNESS: Yes.

THE COMMISSIONER: Well, don't do it yet. If we can give you a fair amount of time. There is a possibility that Dr. Costigan is coming tomorrow



1
2 and there is a possibility that he will be completed
3 before the end of Thursday and if we have a chance of
4 completing you on Thursday I am sure you would be
5 delighted. Have I gone too far?

6 MS. CRONK: No.

7 THE COMMISSIONER: No, because I don't
8 want to interfere with your scheduling if that is so.
9 Don't make yourself available but a little warning
10 will do it. Thank you very much.

11 --- Witness withdraws

12 THE COMMISSIONER: Now, Mr. Sopinka,
13 we are all ears to hear just what your complaint is.
14 Can we just hear it and then take a few minutes or we
15 may go right on. So, do you want to just in brief
16 tell us what your complaint is before you start your
17 argument?

18 MR. SOPINKA: Yes. Well, I have two
19 points. I am dealing entirely with Phase 1.

20 My first point is that in the evidence
21 and in the cross-examination no question should be put,
22 intended to elicit an answer indicating who committed
23 an alleged crime. I am putting it purposely in
24 general language.

25 THE COMMISSIONER: You say that, what,
why, because of the Terms of Reference?



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MR. SOPINKA: Well, I am saying --

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THE COMMISSIONER: The cause of death?

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MR. SOPINKA: As you pointed out to me,

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and I have now had a chance to digest what you said,

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there is a vagueness about the Terms of Reference.

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I say that on a proper interpretation, especially if

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you are going to pay any attention to what Mr.

9

McMurtry said, and presumably one should, then based

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on a proper interpretation of the Order in Council

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you should not, but assuming the Order in Council says

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you should, I said that it goes beyond the

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Constitution, it is unconstitutional and also violates

the Charter insofar as Susan Nelles is concerned.

14

THE COMMISSIONER: But remember I can't.

15

Any finding that I should make - I am certainly not

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going to attempt to determine this question, I think

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this question should properly be argued when we come

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to argument as to the cause of death and I am not going

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to attempt to resolve it now. But any finding that I

do make does not constitute any legal finding of either

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criminal or civil responsibility.

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MR. SOPINKA: Oh, yes.

22

THE COMMISSIONER: Understand that.

23

So, it doesn't make any difference. I mean, if I were

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to make that finding --

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MR. SOPINKA: I don't think that matters.

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You asked me just to state my point, sir, I don't want
4 to argue with you at this stage.

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THE COMMISSIONER: Okay.

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MR. SOPINKA: My submission is that --

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THE COMMISSIONER: Tending to show who
7 was, who if anyone was responsible for the murder?

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MR. SOPINKA: That's correct. Just to
9 answer your question, I quite agree that no
10 Commissioner can give a judgment, but that's not the
11 end of the matter because it is my submission that the
12 Province cannot authorize an inquiry designed to
13 determine as a question of fact who committed a crime
14 in a specific instance. The Attorney General has said
15 that in his statement and I submit that that is not the
16 only authority, that there are other authorities to
16 that effect.

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Now, in the alternative, I submit that
18 if you are going to permit that kind of evidence in
19 Phase 1 then in accordance with Section 5, two things
20 have to happen: first of all, there has to be a
21 Notice of Misconduct to the person against whom the
21 evidence is led.

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THE COMMISSIONER: I don't think that's
23 right because I think what happens is that it is only



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2 if I intend to make a finding that is contrary. That
3 is my understanding of the Act.

4 MR. SOPINKA: Well, let me just explain
5 that because I mean I have had some experience with
6 that section.

7 THE COMMISSIONER: So have I.

8 MR. SOPINKA: What they did in the
9 McDonald Commission is, they led all the evidence and
10 then when the draft report was actually ready they
11 said my God, they are going to make findings of
12 misconduct against certain people and they gave them
13 all notices and said, okay, what would you like to
14 say about it. No one challenged that procedure. But
15 I submit that was wrong.

16 I submit that if you do what they did
17 what you will have to do later on is call all the
18 witnesses back because it is no good to say to someone
19 against whom you are about to make a finding of mis-
20 conduct, oh, now I am giving you notice because I have
21 already decided I may be making a finding of misconduct
22 it's too bad that you didn't ask of the proper questions
23 while I was ruminating on these matters for several
24 months but now what you have to say. I say that is
25 a denial, that is not a proper interpretation of that
Section.



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2 THE COMMISSIONER: You are giving your
3 thoughts on the thing and I may as well throw out my
4 own thoughts to know where you are at.

5 MR. SOPINKA: Yes.

6 THE COMMISSIONER: Under Section 5 of
7 the Public Inquiries Act of Ontario, which of course
8 is quite different, not quite different but a bit
9 different from the Federal Act:

10 "No finding of misconduct on the part
11 of any person shall be made against
12 him in any reported commission after
13 inquiry unless that person had
14 reasonable notice of the substance of
15 the misconduct alleged against him and
16 was allowed full opportunity during
17 the inquiry to be heard in person or
18 by counsel."

19 Let me tell you that is one reason why
20 all of the Trayner team are here represented, that is
21 one reason why they all have been given funding,
22 public funding.

23 Now, if that has not been clear they
24 all have had counsel, they all have been here from the
25 very beginning. It is just exactly that, but remember,
that doesn't mean that I am going to make a finding of



1
2 misconduct on the part of any person or I am even
3 going to allow myself to make such a finding. We are
4 prepared for that eventuality, that's all.

5 MR. SOPINKA: I submit that all that
6 means is that they have been declared to be interested
7 parties. I mean, you would have made the same order
8 if they were interested parties. In fact, the parents
9 are getting funding.

10 THE COMMISSIONER: Well, the parents
11 are getting funding.

12 THE COMMISSIONER: Well, the parents
13 are getting funding because they are interested parties.

14 MR. SOPINKA: Yes.

15 THE COMMISSIONER: There can be surely
16 no question in the minds of anybody on the Trayner
17 team as to why they are being individually represented
18 and why they are receiving funding. If there is any
19 such question, and I don't want to state it openly,
20 but if there is any such question I think it should
21 now be put to rest.

22 MR. SOPINKA: Well, I don't think that
23 the mere fact that a person that is given status under
24 the first Sub-section automatically complies with the
25 obligation under 5(2) to give Notice of Misconduct
otherwise you wouldn't have needed two sections.



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2 THE COMMISSIONER: Well, I must confess
3 that it never really entered my head that they wouldn't
4 all understand.

5 MR. SOPINKA: Well, it says notice.

6 THE COMMISSIONER: Now, if it needs to
7 be said I will say it but I hope it doesn't need to be
8 said.

9 MR. SOPINKA: Well, I am really
10 getting into my argument here and I might as well
11 because my argument isn't that long because there are
12 no authorities that I know of in this Section.

13 THE COMMISSIONER: All right.

14 MR. SOPINKA: But in my submission
15 reasonable notice and a full opportunity to be heard
16 in this particular case means this that we have to be
17 given some notice of the evidence that is going to be
18 led. I specifically refer to the fact that we should
19 have the police report because that is the source of
20 most of the evidence that is being led in this
21 connection.

22 THE COMMISSIONER: May I just say,
23 Mr. Sopinka, so far there really has been no evidence
24 led with respect to, and I put it in complicity in
25 any overdosing of digoxin of any of these babies.
There has been no evidence led with respect to



1
2 particular complicity. The one exception may have been
3 that one time of one of the doctors referring to Miss
4 Nelles appearance, which you objected to and which you
5 were given immediate opportunity to cross-examine.

6 MR. SOPINKA: Well, I think you agreed
7 with me the last time there was another example of the
8 IV's.

9 THE COMMISSIONER: Oh, I guess I did.
10 All right, it obviously didn't register that deeply on
11 me because I twice have forgotten it.

12 MR. SOPINKA: I know you castigated me
13 the last time that I was making a mountain out of a
14 molehill but we are now approaching a time when I am
15 advised sort of obliquely that my client will be called
16 and I presume that if my client is called, I haven't
17 been told that she won't be, that those sorts of
18 questions will be put to my client. It is a very
19 important matter to have settled. If they aren't going
20 to be I would like to know and that is one reason for
21 my motion.

22 The other reason is if my client is
23 going to be called, I think in fairness when three
24 parties to this Inquiry have the police report I should
25 have it because otherwise if those sort of questions
are going to be permitted it is quite unfair for



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2 Counsel to be prepared because he knows what's in the
3 police report and I am hearing it for the first time.

4 Now, I submit that would not be
5 reasonable notice of an allegation of misconduct and
6 full opportunity to be heard in person or by counsel.

7 THE COMMISSIONER: Well, I can assure
8 you you are going to have full opportunity to be heard
9 in person or by counsel with respect to every evidence
10 that has been presented relating to your client which
11 may tend to show her complicity in whatever is found
12 to have existed.

13 Now, there is no problem with respect
14 to that. I think you understood that, I hope you
15 understood that from the beginning, if you don't I
16 make it quite clear now that you will be given full
17 opportunity and you have been represented throughout
18 this piece.

19 Now, the question of the police report
20 of course is something that we have to argue. I am
21 not sure though that I understand really - are you
22 suggesting that we can never hear any evidence that
23 suggests that your client may have had some
24 complicity in the deaths of the children? Is that
25 what you are suggesting?

MR. SOPINKA: No, it is my submission



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2 that unless the evidence relates to another issue and
3 there is no way of adducing the evidence without
4 implicating some person, I can see a situation where
5 the evidence is highly relevant to how the children
6 died and there is no way of leading that evidence
7 without involving an individual. That might be one
8 matter but we have not, with the greatest of respect,
9 explored methods where evidence of that nature,
10 assuming there was such evidence, was adduced. We
11 haven't explored how it could be adduced without having
12 it implicate an individual. It has just been allowed
to go in.

13 I submit that there are many situations
14 where evidence is relevant but the content of the
15 evidence contains some confidential component and a
16 method is arrived at to get the relevant evidence in
17 without disclosing the confidential component. That
18 is just an example. I submit that that sort of thing
19 should be explored here if you think that you can't
20 decide the issue of the means by which the children
21 came to their death without having that sort of
evidence adduced.

22 THE COMMISSIONER: Well, it would
23 certainly be very difficult because you can't have a
24 murder without a murderer, that's the problem. It is
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2 something that faces me. This was taken as you know
3 from the Coroner's Act.

4 MR. SOPINKA: Yes.

5 THE COMMISSIONER: And the whole object,
6 as I understand it from the Attorney General's state-
7 ment, was that it was not to be a trial of a person
8 or for that matter of persons.

9 MR. SOPINKA: Well, I don't think it
10 was ever --

11 THE COMMISSIONER: I don't think that
12 is the intention and that is not my intention to turn
13 this into a trial of persons because clearly whatever
14 result I make will not be binding upon anyone
15 including anybody that I should --

16 MR. SOPINKA: Nor should you determine
17 with respect whether it is murder because to say it's
18 murder you have to come to a conclusion of law as well
19 as fact. The farthest you can go is the children were
20 killed. That's a question of fact but to say it is
21 murder, I mean, there are all sorts of differences
22 between --

23 THE COMMISSIONER: There might be some
24 legitimate complaints if I didn't reach the conclusion
25 with each of them as to whether or not, whether they
reached their death by deliberate or accidental



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overdose of digoxin and if it is deliberate it is obviously murder.

MR. SCOTT: Can I just intervene to ask a question to be sure I understand where we're going?

THE COMMISSIONER: Yes.

MR. SCOTT: Have you decided whether you are going to say who the murderer was?

THE COMMISSIONER: No.

MR. SCOTT: In the event there is evidence that would justify that conclusion?

THE COMMISSIONER: No I haven't.

MR. SCOTT: That surely is critical.

THE COMMISSIONER: Well, I know it is critical and I thought there was no reason why that couldn't be argued at the end whether I can or whether I can't.

MR. SCOTT: I know.

THE COMMISSIONER: It may well be academic because there may not be evidence and it may not be possible to make that decision.

MR. SCOTT: No, bit if you were going to decide that question one way or the other we would then know where we stood because I presume that if you decide that the Terms of Reference don't permit you,



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2 because you are not permitted to make a finding of law,
3 to put the finger on the murderer, who the murderer is,
4 if there is a murderer and if there is evidence, then
5 the problem may disappear.

6 THE COMMISSIONER: Well, the problem
7 may disappear if I can't reach that conclusion in any
8 event. So, I don't need to concern myself with that
9 now. You can look at it either way. I know and I
10 appreciate that that is a problem and I have
11 appreciated that that was a problem from the very
12 beginning and someday we have to have argument on it.
13 I don't intend to have the argument now unless I can
14 be persuaded that that matter has to be decided on.

15 MR. SCOTT: Mr. Commissioner, I am
16 sorry to interrupt, I will go and you will have to
17 excuse me. Can I just make this simple observation?
18 I have no interest, I don't care whether you grant
19 Mr. Sopinka's relief but it seems to me that sooner
20 or later a ruling has to be made so we know where we
21 are going. If you say at the end, well, we will hear
22 argument but if at the end we are going to hear an
23 argument it may recast the whole exercise and it will
24 be like returning to the beginning. If you have
25 decided that the Terms of Reference do not permit you
to name names, so be it. You can tell that by looking



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2 at the Terms of Reference; you can, I can't, that's
3 your job.

4 If, on the other hand, assuming the
5 evidence you are prepared to name names, that tells
6 us where we are going. It seems to me with the
7 greatest of respect, just like in every trial or
8 appeal, if we had a ruling about what you thought you
9 were going to do, what this order intended --

10 THE COMMISSIONER: Well, that might be
11 sound, that might be sound.

12 MR. SCOTT: But I'm not going to get
13 it.

14 THE COMMISSIONER: We might have to
15 have that someday and it might be a very good idea to
16 have it after, I think, after the program of all the
17 preliminary witnesses that have been heard and we then
18 get on, but certainly so far, subject to argument, I
19 think I must determine whether the children, how they
20 came to their deaths, whether by the hand of some
21 human being or by accident or by their anatomical
22 condition. That I think I have to determine to the
23 best of my ability and I don't think there is any
24 real argument with respect if I can get away without
25 doing that.

It may be that we can set aside a day or



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2 two after all of this medical evidence and pharmacolo-
3 gical evidence and biochemistry evidence and all the
4 rest of that has been given and before we start in on
5 the Atlanta Report and the nurses. It may be at that
6 point we should have some argument on the problem. I
7 don't want to have it tonight let me tell you.

8 Now, can we leave that aside for the
9 moment and you go on to the police reports. You want
10 me to make a ruling as to whether or not we will hear
11 any evidence with respect to the complicity of your
12 client and others?

13 MR. SOPINKA: That's correct. I mean,
14 I have just stated the point and if you don't want it
15 argued now, fine. I submit that it is a very
16 important point. I submit that if you decide against
17 me that that kind of evidence can be led then I should
18 be given some notice of it. It is not an unusual
19 request. Also, that is part of it, that I should be
20 given the police report because I think it is unfair
21 to have an inquiry where that sort of evidence is being
22 led and three counsel have access to this information
23 which after all was prepared with public funds and
24 the persons perhaps most closely affected don't have
25 it. I mean, there may be all sorts of questions I may
be asking other witnesses based on the information in



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that to negate that kind of evidence.

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THE COMMISSIONER: But if the police report is prepared - I don't know, your position is not to release it, before I defend your position.

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MR. PERCIVAL: Mr. Commissioner, I am absolutely dumbfounded with the allegation my friend hasn't seen the police report. Mr. Cooper who defended his client at an extensive preliminary hearing had a 300 page Crown brief about all the evidence that was going to be led and I gather my friend, Mr. Sopinka, has never spoken to Mr. Cooper from what he has just said.

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MR. SOPINKA: No, no, I am talking about the police report. There has been a year's investigation after that and even the police undoubtedly turned up some further information. That's what I am asking for. We had a statement produced the other day that a witness gave to the police after the preliminary hearing. So, my friend's remark is completely fatuous.

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MR. PERCIVAL: With respect, my friend's position is completely fatuous because that was Dr. Fowler's statement that was taken on March 21st before he even had the opportunity --

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MR. SOPINKA: No, the police statements.



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MR. PERCIVAL: May I finish? The opportunity to see his own Counsel, Mr. Ortved, four days later. All his statements after March 24th have been ruled by you, Mr. Commissioner, not capable of being produced.

MR. SOPINKA: Well, that's what we are arguing about, the statements after. So, don't tell me that we are talking about what Mr. Cooper had.

MR. PERCIVAL: I wish I had them, Mr. Sopinka.

THE COMMISSIONER: Well, all right, you want to have the police report. What else is it you want to have?

MR. SOPINKA: It is the report that the Attorney General says in his statement:

"I have personally reviewed the extensive police report."

and he says:

"I agree completely with the consensus of opinion reached by the police and my legal advisers as to the laying of criminal charges."

And he says quite plainly that it is as a result of all of the investigation for over a year the police came to the conclusion that there was not sufficient



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evidence. Now, if we are going to have evidence
tending to show that some individual did the crime,
committed the crime, then surely that source of
information to be withheld from those persons and in
the hands of only some of the persons to the Inquiry
is unfair.

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I would like to refer you to what the Court of Appeal
said in the Crime Commission case because they
were dealing with a somewhat similar situation.

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MR. PERCIVAL: Are we supposed to
argue this today, Mr. Commissioner?

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THE COMMISSIONER: No, I do not
think we are.

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MR. PERCIVAL: I thought you had
made that very clear.

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MR. SOPINKA: I thought that
was the purpose of this.

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THE COMMISSIONER: I really just want
to know what your point is. It is the police report
and what other reports, if any, do you want to receive.

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MR. SOPINKA: My position is that
if you rule, and I'm dealing only with Phase 1, that
evidence can be elicited with respect to the
complicity of my client then I am entitled to
notice of such evidence and I am entitled to have
the police report, not just snippets of it here and
there, because I don't know what else in that report -
and I am allowed to see it.

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THE COMMISSIONER: I think all of
the evidence that has been elicited was all in the
Preliminary Inquiry except for the Atlanta Report,



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2 and the Atlanta Report is in your hands, or in the
3 hands of some counsel, and I suspect you must be one
4 of them.

5 MR. SOPINKA: Yes.

6 THE COMMISSIONER: So surely there is
7 nothing that is going to be elicited that you have
8 not got a copy of and if there is anything that is
9 to be elicited, as I suspect there might have been
10 a statement by the doctor, you will receive it.

11 MR. SOPINKA: With the greatest of
12 respect I understand that there either is or is not
13 an additional report by the police as a result of
14 their investigation since the preliminary hearing.
15 The Attorney-General, I assume, was referring to
16 that report and says that shows that there is no
17 evidence upon which to lay charges.

18 So I would assume that that contains
19 some material which would assist me in meeting
20 any suggestions as to the complicity of Susan Nelles.
21 If that is in the possession of the Commission, I
22 submit that to be granted the right of examination
23 and cross-examination is not meaningful if one of
24 the main sources of information is withheld from
25 the party affected.

Now, I am sorry, I made my position



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on this - I thought I had notice as to what my
position was the last day and I understood that
this was the time at which argument was to take place,
but I can appreciate --



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THE COMMISSIONER: I told Mr. Brown that all we were to consider was what the problem is and perhaps if there was a real problem to set aside a time, because obviously we are going to need a great deal of time on this thing if we decide we are going to go into it.

I think I will give some thought to it. I don't consider that this is an immediate problem. Can you satisfy me that it is an immediate problem?

MR. SOPINKA: It is only an immediate problem if the kind of evidence to which I have made reference is about to be adduced.

THE COMMISSIONER: But the last time you complained you so overwhelmed everybody that no one has dared to ask any questions.

MR. SOPINKA: You are obviously being facetious.

THE COMMISSIONER: No, I am not being facetious at all.

MR. PERCIVAL: If Mr. Sopinka had been here more often, he would know that you are right, Mr. Commissioner.

MR. SOPINKA: Well, you have kept quiet for a change.



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THE COMMISSIONER: I do not consider that it is an immediate problem. It may well be a major problem. I will give some thought to it and I think there probably is a problem that you are entitled to argue and we will set aside a day for it at the convenience of everybody, some time perhaps when we find Mr. Lamek and Miss Cronk in trouble with their scheduling. We will set aside a date for it that will be convenient. I think you and Mr. Percival are - not the most important counsel here - but the most involved in this issue. It will be certainly to satisfy you, and we hope to satisfy other people as well.

Does anybody want to say anything, bearing in mind that no decision is going to be made tonight on this question.

MR. PERCIVAL: Mr. Commissioner, I had lots to say, but in view of your already eloquent response to my friend, Mr. Sopinka, I will say nothing more at this time.

THE COMMISSIONER: All right. Anybody else want to say anything?

You heard what I said to Dr. Cutz, that is that there is a possibility that he will be coming back if Dr. Costigan does not take two days.



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So I hope that anybody who wants to cross-examine him will be available.

MR. PERCIVAL: Mr. Commissioner, I have a problem tomorrow with respect to the Law Reform Commission of Ontario. I will be back on Thursday morning.

THE COMMISSIONER: We will certainly bear that in mind for your cross-examination of Dr. Cutz. I don't think there is any danger except for Thursday afternoon because I think Dr. Costigan will certainly take a day plus and he may well take two days or more.

Anyone else?

MR. STRATHY: One last point. This was raised at an early stage, about the possibility of getting some guidance from Miss Cronk and Mr. Lamek as to the witnesses who are coming down the line. They have helped us from time to time on a sort of a short term basis.

THE COMMISSIONER: Every time they make one of these public declarations it turns out that one of the witnesses is not available.

MR. STRATHY: I understand the problem they have.

MR. LAMEK: I am glad my friend asked



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2 me that question, Mr. Commissioner.

3 I have today dictated a list of those
4 witnesses who I presently intend to call in the
5 balance of Phase I and the sequence in which I hope
6 that they would be called. I have been shown to be
7 utterly unreliable with the very first one because
8 I propose next, after Dr. Cutz' completion to call
9 Dr. Bain. He is not available until October 24th
10 so there is an immediate shuffle, but you will at
11 least have the names of all the witnesses whom
12 it is my present intention to call in Phase I, and
13 that will be distributed tomorrow morning, sir.

14 MR. PERCIVAL: Mr. Commissioner, I
15 take it that Mr. Sopinka's client is going to be
16 called in Phase I. I have not seen the list.

17 MR. SOPINKA: Don't get excited.

18 MR. PERCIVAL: I was hoping we might
19 finally hear from her.

20 THE COMMISSIONER: Don't answer the
21 question, but will you be answering the question
22 tomorrow?

23 MR. LAMEK: It will be on the list, one
24 way or another, The answer will be there.

25 THE COMMISSIONER: We will try to
hold off our curiosity until tomorrow when we will



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G2-5

have that advice.

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All right, anything else then? Until

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tomorrow at 10 o'clock.

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---Whereupon the hearing adjourned until 10:00 a.m.
Wednesday, October 5th, 1983.

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